

# **EXHIBIT 2**

Confidential - Per 2004 MDL 1358 Order

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Methyl Tertiary Butyl: Master File No. 1:00-1898  
Ether ("MTBE") : MDL NO. 1358 (SAS)  
Products Liability : M21-88  
Litigation :

---

This Document Relates to:  
Orange County Water District  
v. Unocal Corporation, et al.,  
S.D.N.Y. No. 04 Civ. 4968 (SAS)

---

CONFIDENTIAL  
(Per 2004 MDL 1358 Order)

-----  
July 8, 2008  
-----

Videotaped Deposition of MICHELLE BOYD,  
OCWD'S 30(b)(6) DESIGNEE, held in the law offices of  
Latham & Watkins, 650 Towne Center Drive, Suite 2000,  
Costa Mesa, California beginning at 9:44 a.m., before  
Sandra Bunch VanderPol, RPR, RMR, CRR, CSR #3032.

GOLKOW TECHNOLOGIES, INC.

877.370.3377 ph|917.591.5672 fax

deps@golkow.com

EXHIBIT

tabbies

2

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 30</p> <p>1 to see if the location is safe, if there is indeed a<br/> 2 streamflow or an area where we can sample. Or if<br/> 3 it's a well, they go and check it out to make sure<br/> 4 that it's a well that's sample-able and if our<br/> 5 equipment that we have can actually fit into the<br/> 6 well, or that kind of thing.<br/> 7 Q. In addition to wells which take water<br/> 8 from the subsurface, you know, did fieldwork also<br/> 9 involve sampling surface water sources?<br/> 10 A. Correct.<br/> 11 Q. And is the staff of nine that do this<br/> 12 fieldwork, do they do essentially all the groundwater<br/> 13 and surface water sampling for the Orange County<br/> 14 Water District?<br/> 15 A. Correct.<br/> 16 Q. Are there projects of the department<br/> 17 that you coordinate, other than sampling groundwater<br/> 18 or surface water or performing recon for new sites?<br/> 19 A. No.<br/> 20 Q. You mentioned that in your current<br/> 21 position at Orange County Water District, that you<br/> 22 were involved in all the different cities in the<br/> 23 district. What did you mean by that?<br/> 24 A. We coordinate their groundwater<br/> 25 compliance monitoring. The water district, on their</p> | <p style="text-align: right;">Page 32</p> <p>1 systems around the state that extract water from the<br/> 2 ground and serve it to customers to meet those<br/> 3 standards; is that your understanding?<br/> 4 A. Correct.<br/> 5 Q. So the various cities and water<br/> 6 systems within Orange County's geographic -- Orange<br/> 7 County Water District's geographic boundaries has<br/> 8 certain obligations to sample the water that they are<br/> 9 producing and to analyze it for compliance with the<br/> 10 drinking water standards set by Department of Health<br/> 11 Services; is that correct?<br/> 12 A. Correct.<br/> 13 Q. And what is the role that Orange<br/> 14 County Water District plays in that?<br/> 15 A. We perform the monitoring, the field<br/> 16 monitoring and the lab analysis.<br/> 17 Q. And what is involved in performing<br/> 18 the field monitoring and lab analysis?<br/> 19 A. Staff goes out and samples drinking<br/> 20 water wells for all the different parameters required<br/> 21 by the state at the frequency they are required, and<br/> 22 we return them to the lab for analysis.<br/> 23 Q. Now, I want to go back to the time<br/> 24 that you were employed by the City of Fountain<br/> 25 Valley. And I believe you said that during that</p> |
| <p style="text-align: right;">Page 31</p> <p>1 behalf, coordinates their groundwater compliance<br/> 2 monitoring for the drinking water.<br/> 3 Q. So the Water Quality Department of<br/> 4 Orange County Water District coordinates the<br/> 5 compliance monitoring of the various cities and water<br/> 6 systems within the geographic boundaries of the<br/> 7 district?<br/> 8 A. Correct.<br/> 9 Q. What is the compliance monitoring<br/> 10 that you refer to?<br/> 11 A. The Title 22 drinking water<br/> 12 monitoring.<br/> 13 Q. And for those of us who are not<br/> 14 conversant with this technical information, what is<br/> 15 the Title 22 drinking water sampling?<br/> 16 A. It's the state drinking water<br/> 17 compliance regulations.<br/> 18 Q. And that's done by DHS -- that is a<br/> 19 program administered by the Department of Health<br/> 20 Services?<br/> 21 A. Yes.<br/> 22 Q. Department of Health Services sets<br/> 23 specific standards for various contaminants in water?<br/> 24 A. Correct.<br/> 25 Q. And then it's obligatory for water</p>                                                                                                                                                                                            | <p style="text-align: right;">Page 33</p> <p>1 period, the City of Fountain Valley performed the<br/> 2 sampling of its own wells for the Department of<br/> 3 Health Services; is that correct?<br/> 4 A. No. Not its wells. Its water<br/> 5 system.<br/> 6 Q. All right. So maybe you can explain<br/> 7 what it is that they sampled themselves and what they<br/> 8 didn't sample themselves.<br/> 9 A. The water district samples the water<br/> 10 source, the well. The water system municipality,<br/> 11 water district, samples the distribution system.<br/> 12 Q. So there's really two different<br/> 13 points at which the Department of Health Services<br/> 14 requires water to be sampled --<br/> 15 A. Yes.<br/> 16 Q. -- is that correct?<br/> 17 A. Yes.<br/> 18 Q. One of them is the water source,<br/> 19 which could be either groundwater or surface water;<br/> 20 is that correct?<br/> 21 A. Correct.<br/> 22 Q. And the other is the water in the<br/> 23 system that's actually being distributed to<br/> 24 customers, correct?<br/> 25 A. Correct.</p>                                                                                                                                                                                                                      |

Confidential - Per 2004 MDL 1358 Order

| Page 166                                                 | Page 168                                      |
|----------------------------------------------------------|-----------------------------------------------|
| 1 A. Correct.                                            | 1 Please be advised I have read the foregoing |
| 2 MR. CORRELL: I have nothing further.                   | 2 deposition, and I state there are:          |
| 3 MR. HEARTNEY: Nothing further. Although,               | 3 (Check one) _____ NO CORRECTIONS            |
| 4 we are not completed in this portion of the            | 4 _____ CORRECTIONS PER ATTACHED              |
| 5 deposition, in my view, for the reasons that we        | 5                                             |
| 6 talked about off line.                                 | 6                                             |
| 7 MR. AXLINE: I'm going to make a statement              | 7 _____                                       |
| 8 for the record here. I don't think I have any          | 8 MICHELLE BOYD                               |
| 9 follow-up questions.                                   | 9                                             |
| 10 But I'm looking at the designated issue --            | 10                                            |
| 11 the notice of designated issues for this deposition.  | 11                                            |
| 12 There are many, many issues. One -- issue No. 1 is    | 12                                            |
| 13 divided into a number of subparts. One subpart of     | 13                                            |
| 14 issue No. 1 is sub (e), monitoring of groundwater     | 14                                            |
| 15 quality.                                              | 15                                            |
| 16 This witness was produced because she is the          | 16                                            |
| 17 person familiar with the processes for monitoring     | 17                                            |
| 18 groundwater quality in Orange County. She was asked   | 18                                            |
| 19 very few questions about what she actually does in    | 19                                            |
| 20 this deposition. And I take it from your comments     | 20                                            |
| 21 that you're not going to need to depose her again.    | 21                                            |
| 22 There are other issues having to do with              | 22                                            |
| 23 regulation, protection, management, enhancement of    | 23                                            |
| 24 groundwater quality for which other witnesses will be | 24                                            |
| 25 produced. And I suspect that many of the questions    | 25                                            |

| Page 167                                                | Page 169                                                |
|---------------------------------------------------------|---------------------------------------------------------|
| 1 that were asked of this witness today may be asked of | 1 DEPONENT'S CHANGES OR CORRECTIONS                     |
| 2 those witnesses.                                      | 2 Note: If you are adding to your testimony, print the  |
| 3 But in terms of groundwater monitoring, this          | 3 exact words you want to add. If you are deleting from |
| 4 witness was the District's 30(b)(6) witness on that   | 4 your testimony, print the exact words you want to     |
| 5 topic.                                                | 5 delete. Specify with "Add" or "Delete" and sign this  |
| 6 And I have no questions for the witness.              | 6 form.                                                 |
| 7 MR. HEARTNEY: All done. I think there's               | 7 DEPOSITION OF: MICHELLE BOYD                          |
| 8 nothing more for us to do right now.                  | 8 CASE: OCWD VS. UNOCAL, ET AL.                         |
| 9 So we can go off the record.                          | 9 DATE OF DEPOSITION: JULY 8, 2008                      |
| 10 THE VIDEOGRAPHER: Thank you.                         | 10 PAGE LINE CHANGE/ADD/DELETE                          |
| 11 Off the record. The time is 3:08 p.m.                | 11 _____                                                |
| 12 (The deposition was concluded at 3:08 p.m.)          | 12 _____                                                |
| 13 --o0o--                                              | 13 _____                                                |
| 14                                                      | 14 _____                                                |
| 15                                                      | 15 _____                                                |
| 16                                                      | 16 _____                                                |
| 17                                                      | 17 _____                                                |
| 18                                                      | 18 _____                                                |
| 19                                                      | 19 _____                                                |
| 20                                                      | 20 _____                                                |
| 21                                                      | 21 _____                                                |
| 22                                                      | 22 _____                                                |
| 23                                                      | 23 _____                                                |
| 24                                                      | 24 DEPONENT'S SIGNATURE _____                           |
| 25                                                      | 25 DATE _____                                           |

43 (Pages 166 to 169)

Confidential - Per 2004 MDL 1358 Order

Page 170

REPORTER'S CERTIFICATE

I certify that the witness in the foregoing deposition.

MICHELLE BOYD,  
was by me duly sworn to testify in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said testimony, pages 1 through 169, was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of July, 2008.

---

SANDRA BUNCH VANDERPOL  
Certified Shorthand Reporter  
Certificate No. 3032

44 (Page 170)

# **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether :  
("MTBE") : Master File  
Products Liability Litigation : No. 1:00-1898  
: MDL No. 1358 (SAS)  
: M21-88

\_\_\_\_\_  
This document relates to the :  
following case: :

Orange County Water District v. :  
Unocal Corp., et al., 04 Civ. 4968 : VOLUME VI  
(SAS) :  
: Pages 1208 - 1392  
\_\_\_\_\_

CONFIDENTIAL - (PER 2004 MDL 1358 ORDER).

FRIDAY, AUGUST 27, 2010

-----

Videotaped Deposition of ROY L. HERNDON,  
Volume VI, Orange County Water District's 30(b)(6)  
designee in re Site Specific Station Investigations,  
held in the Law Offices of Latham & Watkins, 650 Town  
Center Drive, 20th Floor, Costa Mesa, California  
beginning at 9:04 a.m.

-----

Reported by:  
Sandra Bunch VanderPol, CSR #3032  
Certified Realtime Reporter  
Registered Merit Reporter  
Realtime Systems Administrator credentialed  
Fellow, Academy of Professional Reporters



\_\_\_\_\_  
GOLKOW TECHNOLOGIES, INC.  
877.370.3377 ph|917.591.5672 fax  
deps@golkow.com

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1305</p> <p>1 Station No. 7-4283 as -- it appears to be another<br/>2 site within Plume 1 that is designated as one of the<br/>3 ten. And I'm looking at a map listed as "Figure 1<br/>4 Site Locations" that came right out of the Hargis<br/>5 Work Plan.<br/>6 Q. And which work plan was that? Do you<br/>7 remember the date of that work plan?<br/>8 A. I think this was the earlier in July<br/>9 work plan. I think the only thing that changed was<br/>10 just a subsequent addendum or amendment to the work<br/>11 plan. I don't think it changed the body of the work<br/>12 plan.<br/>13 Q. Now, I know I asked you a moment ago<br/>14 what is in the binder, and we summarized a bunch of<br/>15 categories of documents. I don't think excerpts from<br/>16 the Hargis Work Plan were in your response.<br/>17 So now I'm curious whether there are other<br/>18 things -- again, other things in the binder that were<br/>19 not included either in our discussion or counsel's<br/>20 characterization.<br/>21 A. Okay. I saw "Mr. Herndon will<br/>22 also" -- I'm looking at the August 24th, 2010 letter<br/>23 to Mr. Heartney from Todd Schmidt, and it states:<br/>24 "Mr. Herndon will also be reviewing the reports<br/>25 prepared by Hargis -- or by Komex and/or Hargis +</p> | <p style="text-align: right;">Page 1307</p> <p>1 talked about earlier.<br/>2 A. Sure.<br/>3 Q. Thank you.<br/>4 Other than the work that you've testified to<br/>5 this morning, did the District ask Hargis to do any<br/>6 additional work with respect to the station at 9475<br/>7 Warner Avenue?<br/>8 A. Not that I know of. Not that I can<br/>9 recall.<br/>10 Q. Has any other consultant been asked<br/>11 to do any work since 2008 regarding the station at<br/>12 9475 Warner Avenue?<br/>13 A. No.<br/>14 Q. You testified back in 2008 -- and I'm<br/>15 going to paraphrase. And if you feel that you don't<br/>16 recall it that way, you know, please push back.<br/>17 A. Okay.<br/>18 Q. But you testified back in your<br/>19 deposition in 2008 that you were unable to state<br/>20 definitively that the MTBE that had been detected in<br/>21 NB-TAMD was MTBE from the service station site at<br/>22 9475 Warner Avenue. Do you recall that testimony?<br/>23 A. No, I don't recall that.<br/>24 Q. Do you recall it differently?<br/>25 A. No. I'm just saying I don't remember</p>                                                                                                       |
| <p style="text-align: right;">Page 1306</p> <p>1 Associates that relate to the station."<br/>2 So I guess I was thinking that was already<br/>3 included. But, anyway, either way.<br/>4 Q. Okay. Now, I understood that to<br/>5 mean --<br/>6 A. No problem.<br/>7 Q. -- the site specific reports, like<br/>8 Exhibit 98.<br/>9 A. Oh, okay.<br/>10 Q. Is there anything else in the binder<br/>11 other than what you've told me about?<br/>12 A. Let me make sure I haven't missed<br/>13 anything else.<br/>14 A table that is called "Bellwether Plume<br/>15 List Comparison." I don't have a Bates number on it.<br/>16 It's dated April 21st, 2009.<br/>17 And then I have a table that states, "Orange<br/>18 County Water District versus Unocal Corp., et al.<br/>19 Plume List," and it's dated April 23rd, 2007.<br/>20 Q. Perhaps over the lunch break I will<br/>21 just ask to make copies of the --<br/>22 A. Sure.<br/>23 Q. -- three pages that --<br/>24 A. You bet.<br/>25 Q. -- seem to be beyond the list that we</p>                                                                                                                                                                                                                                                                                                | <p style="text-align: right;">Page 1308</p> <p>1 that. I have no reason to believe I didn't testify<br/>2 to that general paraphrase. I just don't -- I just<br/>3 don't remember.<br/>4 MS. O'REILLY: Where are you reading from?<br/>5 MR. TEMKO: Well, I'm reading from, for<br/>6 example, page 3264.<br/>7 MS. O'REILLY: Which date?<br/>8 MR. TEMKO: Oh, I'm sorry. Which<br/>9 deposition?<br/>10 MS. O'REILLY: Yeah.<br/>11 THE WITNESS: The deposition that<br/>12 <u>Mr. Herndon gave on November 17, 2008.</u><br/>13 <u>MS. O'REILLY: Okay.</u><br/>14 <u>MR. TEMKO: And I will quote, just to orient</u><br/>15 <u>you,</u><br/>16 <u>THE WITNESS: Sure.</u><br/>17 <u>MR. TEMKO: Quote: "But I -- at this point</u><br/>18 <u>I cannot definitively say that the MTBE from the</u><br/>19 <u>Texaco site has -- is the same as the MTBE that was</u><br/>20 <u>detected. That type of investigation needs to be</u><br/>21 <u>done," unquote.</u><br/>22 <u>Q. And the only reason I'm going back</u><br/>23 <u>here is to guard against Ms. O'Reilly saying, you</u><br/>24 <u>know, you're supposed to be asking about what</u><br/>25 <u>happened since 2008. Otherwise it would probably be</u></p> |



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1309</p> <p>1 a little bit easier.</p> <p>2 But I guess my question is: Is that still</p> <p>3 true today?</p> <p>4 A. I would say the District staff has</p> <p>5 not performed the type of fate and transport analysis</p> <p>6 that we talked about similar to the G &amp; M No. 4 site,</p> <p>7 as with this site that we're talking about, to</p> <p>8 determine whether the MTBE from this site, at 9475</p> <p>9 Warner Avenue, is the source of the MTBE that was</p> <p>10 detected at the NB-TAMD well.</p> <p>11 Q. So the answer to the question is,</p> <p>12 "Yes"?</p> <p>13 A. I guess. Yes, we have not done that</p> <p>14 analysis. I still can't make that determination.</p> <p>15 Q. And that's true of the other focus</p> <p>16 stations in Plume 1, correct? As you said, in 2008,</p> <p>17 quote, "I can't trace the contamination to a</p> <p>18 particular site," unquote.</p> <p>19 Is that still true today?</p> <p>20 A. As to the focus stations in Plume 1,</p> <p>21 that is correct.</p> <p>22 Q. You testified back in 2008 that you</p> <p>23 were, quote, "Not aware of any information that would</p> <p>24 indicate that -- that there's been a release,</p> <p>25 bracket, from the 9475 Warner station, closed.</p> | <p style="text-align: right;">Page 1311</p> <p>1 A. No, I am not aware of any new release</p> <p>2 since June of 2008 or --</p> <p>3 Q. May.</p> <p>4 A. -- May of 2000, yes.</p> <p>5 Q. Thank you.</p> <p>6 During the deposition in 2008 -- and,</p> <p>7 Counsel, I'm looking at testimony and questioning</p> <p>8 around pages 3278 to 3281 in the November 17th, 2008</p> <p>9 deposition of Mr. Herndon.</p> <p>10 Back in your November 2008 deposition, I</p> <p>11 asked you about a feasibility study document that was</p> <p>12 in your binder that had been prepared by the</p> <p>13 consultant working on this site, a company called</p> <p>14 WGR. And in particular I referenced a statement in</p> <p>15 the WGR Feasibility Study document dated</p> <p>16 February 20th, 2006, talking about some modeling that</p> <p>17 had been done by WGR. It basically -- again,</p> <p>18 paraphrasing.</p> <p>19 "The WGR modeling suggested that over the</p> <p>20 20-year period that the -- because the plume seemed</p> <p>21 to be relatively static, that over the next 20 years,</p> <p>22 quote, it appears the closest production well</p> <p>23 receptor will not be impacted."</p> <p>24 And I asked you at that point, quote, "Do</p> <p>25 you have any reason, as you sit here today, to</p>                            |
| <p style="text-align: right;">Page 1310</p> <p>1 bracket, since May 6 of 2000."</p> <p>2 Do you need that read back? I'm not trying</p> <p>3 to confuse you.</p> <p>4 A. No. You're just telling me what I</p> <p>5 testified to at that time.</p> <p>6 MS. O'REILLY: I can have him read it. I</p> <p>7 have it on my screen right here. You're at 3266?</p> <p>8 MR. TEMKO: I am.</p> <p>9 MS. O'REILLY: Roy, do you understand the</p> <p>10 question?</p> <p>11 THE WITNESS: Well, it was more of a</p> <p>12 statement.</p> <p>13 MR. TEMKO: It was a statement setting up</p> <p>14 the following question.</p> <p>15 Q. Is that still true today?</p> <p>16 A. Let me check my notes, if I may.</p> <p>17 And, again, as -- as this morning, when you're saying</p> <p>18 "a release," do you mean a release of product, fuel</p> <p>19 essentially, to the soil from the facilities or are</p> <p>20 you talking about release of contamination moving on</p> <p>21 downgradient, which I want to make sure I'm clear on</p> <p>22 which release you might be referring to.</p> <p>23 Q. The question back in 2008 and today,</p> <p>24 both relate to the former, a release from the UST</p> <p>25 system at the site.</p>                                                                | <p style="text-align: right;">Page 1312</p> <p>1 disagree with that statement in the WGR report from</p> <p>2 February 2006?"</p> <p>3 And you answered, in part, quote, "I would</p> <p>4 need to spend a lot more time to be able to give you</p> <p>5 an answer to that, whether I would agree with this or</p> <p>6 disagree with this conclusion."</p> <p>7 Since your deposition in 2008, have you or</p> <p>8 the District taken any steps to consider whether the</p> <p>9 District agrees or disagrees with the statements made</p> <p>10 by WGR in the 2006 report?</p> <p>11 A. Well, the District has not undertaken</p> <p>12 the type of fate and transport analysis, I think,</p> <p>13 that would need to be done to -- to really be able to</p> <p>14 answer that question or draw a more definitive</p> <p>15 conclusion as to that -- a response to that statement</p> <p>16 in a WGR report.</p> <p>17 Q. I asked you in November of 2008,</p> <p>18 quote, "As you sit here today, you can't say that</p> <p>19 they are wrong?"</p> <p>20 "ANSWER: I can't say they are wrong,"</p> <p>21 unquote.</p> <p>22 Is that still your testimony today?</p> <p>23 A. Well, I think one of their comments</p> <p>24 was that the plume is stable. And I guess the data I</p> <p>25 have seen since June of 2008 -- I saw changes in</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1317</p> <p>1 MS. O'REILLY: Vague. Ambiguous.<br/>2 Overbroad.<br/>3 THE WITNESS: Well, I know as part of<br/>4 Hargis's scope of work, when they prepared the<br/>5 Summary Report, they did indicate an oil production<br/>6 well is located about 600 feet southeast of the site,<br/>7 and that there is the possibility that that well<br/>8 could provide a preferential pathway for<br/>9 contamination.<br/>10 So it appears as though that was part of<br/>11 Hargis's scope of work to at least identify local<br/>12 potential conduits.<br/>13 BY MR. TEMKO:<br/>14 Q. And just so the record is clear,<br/>15 you're looking at the last bullet on the first page<br/>16 of Exhibit 98; is that correct?<br/>17 A. Yes.<br/>18 Q. Since December 23rd, 2008, which<br/>19 appears to be the date of this document, if we look<br/>20 at the footer, has the District done anything to<br/>21 investigate whether the oil production well referred<br/>22 to in the document was a potential preferential<br/>23 pathway for contaminant migration?<br/>24 MS. O'REILLY: Vague. Ambiguous.<br/>25 Overbroad.</p>      | <p style="text-align: right;">Page 1319</p> <p>1 MS. O'REILLY: Same objection.<br/>2 Go ahead.<br/>3 THE WITNESS: Not that I know of.<br/>4 BY MR. TEMKO:<br/>5 Q. Since June of 2008, has the District<br/>6 had any communications with anyone at the City of<br/>7 Fountain Valley regarding the remediation activities<br/>8 at the 9475 Warner Avenue site?<br/>9 MS. O'REILLY: Vague. Ambiguous.<br/>10 THE WITNESS: Not that I'm aware of.<br/>11 BY MR. TEMKO:<br/>12 Q. Since June of 2008, has the District<br/>13 had any communications with any other water producers<br/>14 in the area, including the City of Newport Beach,<br/>15 regarding the remediation activities at the 9475<br/>16 Warner Avenue site?<br/>17 A. Not that I know of.<br/>18 MR. TEMKO: I think we're coming to the end<br/>19 of the tape. And this is a decent time to break. So<br/>20 let's go off the record.<br/>21 THE VIDEOGRAPHER: With the approval of<br/>22 counsel, we are going off the record. The time is<br/>23 approximately 12:11.<br/>24 (Lunch recess taken at 12:11 p.m.)<br/>25 --o0o--</p>                                        |
| <p style="text-align: right;">Page 1318</p> <p>1 THE WITNESS: Not that I know of. I don't<br/>2 believe so.<br/>3 BY MR. TEMKO:<br/>4 Q. Since June of 2008, has the District<br/>5 had any communications with the Orange County Health<br/>6 Care Agency regarding remediation activities at 9475<br/>7 Warner Avenue?<br/>8 A. I'm not aware of any discussions<br/>9 between our agency and regulatory agencies.<br/>10 Q. Since June of 2008, has the District<br/>11 had any communications with anyone at the Santa Ana<br/>12 Regional Water Quality Control Board regarding the<br/>13 remediation activities at 9475 Warner Avenue?<br/>14 A. Not that I know of.<br/>15 Q. Since June of 2008, has the District<br/>16 had any communications with anyone at Shell<br/>17 concerning the remediation activities at 9475 Warner<br/>18 Avenue?<br/>19 MS. O'REILLY: Vague. Ambiguous.<br/>20 THE WITNESS: I don't believe so.<br/>21 BY MR. TEMKO:<br/>22 Q. Since June of 2008, has anyone at the<br/>23 District had any communications with any of Shell's<br/>24 remediation consultants regarding the remediation<br/>25 activities at that site?</p> | <p style="text-align: right;">Page 1320</p> <p>1 AFTERNOON SESSION 1:22 P.M.<br/>2 --o0o--<br/>3 THE VIDEOGRAPHER: With the approval of<br/>4 counsel, we are back on the record. The time is<br/>5 approximately 1:22. This is the beginning of tape<br/>6 No. 3.<br/>7 BY MR. TEMKO:<br/>8 Q. Now I can really say good afternoon.<br/>9 We are still talking about the site at 9475 Warner<br/>10 Avenue. And we're almost done. I have a couple of<br/>11 follow-up questions.<br/>12 Mr. Herndon, since June of 2008, has the<br/>13 District discovered any evidence to indicate that<br/>14 that the contaminant plume at 9475 Warner Avenue has<br/>15 commingled with the contaminant plume from any of the<br/>16 other focus stations in Focus Plume 1?<br/>17 MS. O'REILLY: I'm going to object to the<br/>18 extent it calls for an expert opinion. Lacks<br/>19 foundation.<br/>20 Go ahead.<br/>21 THE WITNESS: I don't recall seeing any data<br/>22 since June of 2008 that indicated commingling of MTBE<br/>23 of this station with another station.<br/>24 BY MR. TEMKO:<br/>25 Q. Mr. Herndon, since June of 2008, what</p> |

Confidential - Per 2004 MDL 1358 Order

| Page 1389                                                | Page 1391                                   |
|----------------------------------------------------------|---------------------------------------------|
| 1 REPORTER'S CERTIFICATE                                 | 1 ACKNOWLEDGMENT OF DEPONENT                |
| 2                                                        | 2                                           |
| 3 I certify that the witness in the foregoing            | 3 I, _____, do                              |
| 4 deposition.                                            | 4 hereby certify that I have read the       |
| 5 ROY HERNDON                                            | 5 foregoing pages, and that the same        |
| 6 was by me duly sworn to testify in the within-entitled | 6 is a correct transcription of the answers |
| 7 cause; that said deposition was taken at the time and  | 7 given by me to the questions therein      |
| 8 place therein named; pages 1204 through 1386 of the    | 8 propounded, except for the corrections or |
| 9 testimony of said witness were reported by me, a duly  | 9 changes in form or substance, if any,     |
| 10 Certified Shorthand Reporter of the State of          | 10 noted in the attached Errata Sheet.      |
| 11 California authorized to administer oaths and         | 11                                          |
| 12 affirmations, and said testimony was thereafter       | 12                                          |
| 13 transcribed into typewriting.                         | 13                                          |
| 14 I further certify that I am not of counsel or         | 14                                          |
| 15 attorney for either or any of the parties to said     | 15 Subscribed and sworn                     |
| 16 deposition, nor in any way interested in the outcome  | 16 to before me this                        |
| 17 of the cause named in said deposition.                | 17 _____ day of _____, 20____.              |
| 18 IN WITNESS WHEREOF, I have hereunto set my hand       | 18 My commission expires: _____             |
| 19 this 1st day of September, 2010.                      | 19 Notary Public                            |
| 20                                                       | 20                                          |
| 21                                                       | 21                                          |
| 22                                                       | 22                                          |
| 23 SANDRA BUNCH VANDER POL, RMR, CRR                     | 23                                          |
| 24 Certified Shorthand Reporter                          | 24                                          |
| 25 Certificate No. 3032                                  | 25                                          |
| Page 1390                                                | Page 1392                                   |
| 1 -----                                                  | 1 LAWYER'S NOTES                            |
| 2 ERRATA                                                 | 2 PAGE LINE                                 |
| 3 -----                                                  | 3                                           |
| 4 PAGE LINE CHANGE                                       | 4                                           |
| 5 REASON: _____                                          | 5                                           |
| 6                                                        | 6                                           |
| 7 REASON: _____                                          | 7                                           |
| 8                                                        | 8                                           |
| 9 REASON: _____                                          | 9                                           |
| 10                                                       | 10                                          |
| 11 REASON: _____                                         | 11                                          |
| 12                                                       | 12                                          |
| 13 REASON: _____                                         | 13                                          |
| 14                                                       | 14                                          |
| 15 REASON: _____                                         | 15                                          |
| 16                                                       | 16                                          |
| 17 REASON: _____                                         | 17                                          |
| 18                                                       | 18                                          |
| 19 REASON: _____                                         | 19                                          |
| 20                                                       | 20                                          |
| 21 REASON: _____                                         | 21                                          |
| 22                                                       | 22                                          |
| 23 REASON: _____                                         | 23                                          |
| 24                                                       | 24                                          |
| 25 REASON: _____                                         | 25                                          |

47 (Pages 1389 to 1392)

Confidential - Per 2004 MDL 1358 Order

Page 1663

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether :  
("MTBE") : Master File  
Products Liability Litigation : No. 1:00-1898  
: MDL No. 1358 (SAS)  
: M21-88

This document relates to the :  
following case: :

Orange County Water District v. :  
Unocal Corp., et al., 04 Civ. 4968 : VOLUME VIII  
(SAS) :  
: Pages 1663-1893

CONFIDENTIAL - (PER 2004 MDL 1358 ORDER)

-----  
SEPTEMBER 1, 2010  
-----

Videotaped Deposition of ROY L. HERNDON,  
Volume VIII, Orange County Water District's 30(b)(6)  
Designee in Re Site Specific Station Investigations,  
held at 650 Town Center Drive, 20th Floor, Costa Mesa,  
California, commencing at 9:49 a.m., on the above date,  
before Kimberly S. Thrall, a Registered Professional  
Reporter and Certified Shorthand Reporter.

Golkow Technologies, Inc.  
877.370.3377 ph | 917.591.5672 fax  
deps@golkow.com

## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1676</p> <p>1 A. That's correct.</p> <p>2 Q. Has OCWD received the overall project</p> <p>3 site-specific health and safety plan with emergency</p> <p>4 information for five sites at this site?</p> <p>5 A. No, we haven't.</p> <p>6 Q. Okay. Has work begun on the plan?</p> <p>7 A. I -- I'd be speculating. It very well may</p> <p>8 have. I just don't know.</p> <p>9 Q. So Hargis -- if Hargis has started, they</p> <p>10 haven't communicated that to the District?</p> <p>11 A. I would need to check with Mr. Bolin, who would</p> <p>12 be able to confirm that. It wasn't communicated to me,</p> <p>13 but it doesn't mean it wasn't communicated to Mr. Bolin.</p> <p>14 Q. Has Hargis completed the encroachment and well</p> <p>15 installation permits process for this station?</p> <p>16 A. I don't believe so.</p> <p>17 Q. How about the traffic -- traffic control plan?</p> <p>18 A. I -- I don't believe so.</p> <p>19 Q. Do you know if it started either of those two</p> <p>20 initiatives?</p> <p>21 A. I believe Mr. Bolin had indicated to me that</p> <p>22 those activities have -- have started.</p> <p>23 Q. Okay. When did he communicate that to you?</p> <p>24 A. I think it was either earlier this week or late</p> <p>25 last week.</p> | <p style="text-align: right;">Page 1678</p> <p>1 10 stations.</p> <p>2 Q. And he did that for -- for 1905?</p> <p>3 A. And I believe this was one of them.</p> <p>4 Q. And what did he -- let me just ask you this:</p> <p>5 Are these locations now confirmed locations, or have any</p> <p>6 of them changed?</p> <p>7 A. I'm not aware that they have changed.</p> <p>8 Q. Did OCWD agree to start the CPT testing at</p> <p>9 these locations?</p> <p>10 A. The District approved the scope of work and</p> <p>11 work plan by Hargis, and so the -- the scope has been</p> <p>12 approved. The question will be if a CPT can, in fact,</p> <p>13 be constructed at each of these locations or whether</p> <p>14 issues such as utility clearance might require the</p> <p>15 location to be adjusted somewhat, because those issues</p> <p>16 have -- are part of the -- the details that need to be</p> <p>17 completed before we can actually make sure can we put a</p> <p>18 CPT at that -- at that spot.</p> <p>19 Q. Okay. But as of this time, there are no plans</p> <p>20 to change the locations unless circumstances require it?</p> <p>21 A. If -- if there's a site-specific circumstance</p> <p>22 that would cause us to have to adjust the location,</p> <p>23 that -- that is a possibility, but there's -- I'm not</p> <p>24 aware of any other overriding reasons why we would not</p> <p>25 proceed with the locations as generally shown on this</p> |
| <p style="text-align: right;">Page 1677</p> <p>1 Q. I'll try to figure out what's the best</p> <p>2 orientation for this next exhibit. I will mark it --</p> <p>3 Exhibit 19 is --</p> <p>4 MR. AXLINE: Counsel, do you mean 119 or 19?</p> <p>5 MR. FINSTEN: I'm sorry. Exhibit 119. Thank</p> <p>6 you, sir.</p> <p>7 (Herndon Exhibit 119 was marked.)</p> <p>8 BY MR. FINSTEN:</p> <p>9 Q. Exhibit 119 is a Hargis map for ARCO 1905 dated</p> <p>10 July 2010. It is Bates-marked OCWD-MTBE-001-418781.</p> <p>11 You've seen this map before, Mr. Herndon?</p> <p>12 A. I believe so.</p> <p>13 Q. And there are seven conceptual CPT/HydroPunch</p> <p>14 locations for dissection purposes only on this map; is</p> <p>15 that correct? Those are the squares.</p> <p>16 A. That's what is indicated on this map, yes.</p> <p>17 Q. Okay. Have there been any discussions between</p> <p>18 OCWD and Hargis regarding the locations of the</p> <p>19 CPT/HydroPunch locations?</p> <p>20 A. Yes.</p> <p>21 Q. And when did those discussions take place?</p> <p>22 A. It was subsequent to the July work plan</p> <p>23 submittal by Hargis to the District, that we met with</p> <p>24 them and Chris Ross from Hargis, and he walked us</p> <p>25 through the proposed CPT locations for 10 --</p>         | <p style="text-align: right;">Page 1679</p> <p>1 map.</p> <p>2 Q. Have there been any discussions between Orange</p> <p>3 County Water District and the Santa Ana Regional Water</p> <p>4 Quality Control Board about the District's plans to</p> <p>5 conduct CPT and HydroPunch sampling at this site?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. How about the Orange County Health Care Agency?</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. Have there been any other communications since</p> <p>10 2008 between OCWD and the Regional Board or Health Care</p> <p>11 Agency regarding this site?</p> <p>12 A. Not that I'm aware of.</p> <p>13 Q. Okay. Now, looking at the map that is</p> <p>14 Exhibit 19, there are --</p> <p>15 A. 119.</p> <p>16 Q. 119. Thank you for correcting me. And I'll</p> <p>17 probably keep doing that. When I call you Mr. Bolin,</p> <p>18 just reach across and slap me.</p> <p>19 Now looking at the map, there are three CPT</p> <p>20 locations to the south of the ARCO station and four to</p> <p>21 the north of the station. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And then of the four that are to the north of</p> <p>24 the station, there are three that are actually northeast</p> <p>25 of the station apparently in Talbert Avenue, in the</p>                                                                                                                                                        |

5 (Pages 1676 to 1679)



## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1680</p> <p>1 road, that that's where the plan is to do that; is that<br/>2 correct?<br/>3 A. It's -- it looks like three of the C -- of the<br/>4 proposed CPTs are -- it looks like they're either in the<br/>5 road or potentially in the sidewalk. But I think the<br/>6 goal in general is to have as many of the CPTs in public<br/>7 rights-of-way, whether it's the road or the sidewalk, as<br/>8 possible.<br/>9 Q. And we're talking now about what's labeled<br/>10 A-1905A, A-1905B, and A-1905C, correct?<br/>11 A. Yes.<br/>12 Q. And so the idea there is to do them in public<br/>13 right-of-ways.<br/>14 And I may have asked you this already, but the<br/>15 permits and traffic-control issues we think are under<br/>16 way for those locations?<br/>17 A. That's my understanding.<br/>18 Q. Now, there's four CPT and HydroPunch locations<br/>19 that are apparently on private property, one to the<br/>20 north of the Station A-1905D that's across Talbert<br/>21 Avenue?<br/>22 A. Yes.<br/>23 Q. And then 1905E, 1905F and 1905G, which all<br/>24 appear to be not in public right-of-ways; is that<br/>25 correct?</p>                                                                   | <p style="text-align: right;">Page 1682</p> <p>1 has been identified in -- in all of these cases or -- or<br/>2 any of these cases.<br/>3 Q. Once the owners are identified, what are the<br/>4 District's plans to gain access?<br/>5 MR. AXLINE: Objection. Calls for speculation.<br/>6 Calls for a legal conclusion.<br/>7 THE WITNESS: I -- I don't know specifically<br/>8 what is -- what is going to be done. I can -- in<br/>9 general, our -- my experience is that in these cases, we<br/>10 would try to contact the property owner and -- and make<br/>11 a straightforward simple request to -- to allow us to<br/>12 have access on their property.<br/>13 BY MR. FINSTEN:<br/>14 Q. I am going to pass you a copy of what has<br/>15 previously been marked as Exhibit 2 in this deposition.<br/>16 I'm not going to mark it again. This is the<br/>17 supplemental declaration of David Bolin in support of<br/>18 Plaintiff Orange County Water District's Response to<br/>19 Defendants' Further Supplemental Memorandum, Re:<br/>20 Summary Judgment Motion on Statute of Limitations. It<br/>21 was filed on June 3rd, 2009.<br/>22 And I would ask you to look at paragraph 26 of<br/>23 Exhibit 2, which discusses this plume -- this station,<br/>24 1905, and I'd like you to go about six lines down into<br/>25 the paragraph, and there's a sentence that reads:</p> |
| <p style="text-align: right;">Page 1681</p> <p>1 A. Based on this map, it -- it appears as though<br/>2 they're -- they -- they appear to be just outside -- or<br/>3 certainly A-1905E and A-1905G clearly appear to be<br/>4 outside public rights-of-way. A-1905F looks to be maybe<br/>5 just west of Magnolia Street, at least as shown on this<br/>6 map.<br/>7 Q. Okay. Has the District or Hargis taken any<br/>8 steps to gain access to this private property such as<br/>9 pursuing easements or eminent domain?<br/>10 A. My understanding is that -- is that those<br/>11 efforts are -- have been initiated. They're -- they're<br/>12 in progress.<br/>13 Q. Has Hargis contacted the owners of the private<br/>14 property?<br/>15 A. I don't know.<br/>16 Q. Do you know what has been done to initiate the<br/>17 process?<br/>18 A. I believe -- I recall that the property<br/>19 ownership was -- was being or had been researched to<br/>20 identify the property owners.<br/>21 Q. But do you know if Hargis or the District has<br/>22 reached out to the owners or even established who the<br/>23 owners are?<br/>24 A. I don't know if they've reached out to the<br/>25 owner -- to the owners. I don't know if the ownership</p> | <p style="text-align: right;">Page 1683</p> <p>1 "Groundwater contour maps demonstrate that the shallow<br/>2 groundwater flow is principally to the southeast at this<br/>3 station."<br/>4 Do you see that?<br/>5 A. Yes.<br/>6 Q. Do you agree with Mr. Bolin's statement here?<br/>7 MR. AXLINE: I'm going to object for the record<br/>8 that this document refers, at the point following the<br/>9 sentence you just read, to Exhibit 9, and the document<br/>10 is incomplete. It doesn't have Exhibit 9 attached to<br/>11 it.<br/>12 MR. FINSTEN: That is correct. I did not mark<br/>13 the exhibits. They're rather thick. I will represent<br/>14 that it is a contour -- a groundwater contour map from<br/>15 the ARCO consultant at this station, but if you want, I<br/>16 can probably find another source. Let me rephrase this<br/>17 and back up a second.<br/>18 BY MR. FINSTEN:<br/>19 Q. In preparing for the deposition, did you come<br/>20 across any documents that showed the directional flow of<br/>21 the groundwater at the site?<br/>22 A. Yes, I did.<br/>23 Q. And do you remember what those documents were?<br/>24 A. I believe one is the Hargis report on that<br/>25 site.</p>                                                                                                                                                                          |

6 (Pages 1680 to 1683)

## Confidential - Per 2004 MDL 1358 Order

Page 1684

1 Q. That would actually be what I would refer to  
2 probably. So why don't we just mark that real quick and  
3 go to it. That would be Exhibit 120.  
4 (Herndon Exhibit 120 was marked.)  
5 BY MR. FINSTEN:  
6 Q. And Exhibit 120 is the Hargis & Associates site  
7 summary for ARCO 1905. It is labeled Global ID No.  
8 T0605900033, and it is Bates-marked OCWD-MTBE-001-418086  
9 through -133.  
10 And if you turn to page 3 of the document, it  
11 reads, the third paragraph, "The direction of  
12 groundwater flow in the upper zone of the semi-perched  
13 aquifer at the site is generally towards the southeast  
14 during times when the soil vapor extraction, dual phase  
15 extraction or remediation system were not in operation."  
16 MR. AXLINE: Objection. Mischaracterizes the  
17 document. You did not read that full sentence.  
18 MR. FINSTEN: I was going to ask if I read it  
19 correctly. So if I didn't, please correct -- what I'm  
20 leaving out?  
21 MR. AXLINE: I believe you left out the word  
22 "generally" when you said, "Towards the southeast."  
23 MR. FINSTEN: Oh. Well, thank you for the  
24 correction.  
25 ///

Page 1685

1 BY MR. FINSTEN:  
2 Q. "The semi-perched aquifer at the site was  
3 generally towards the southeast during times when the  
4 soil vapor extraction, dual phase extraction or  
5 remediation system were not in operation."  
6 Did I read it correctly?  
7 A. I think you got it that time.  
8 Q. Do you agree that this statement is accurate?  
9 A. I -- I don't disagree with this sentence.  
10 Q. Okay. And the sentence above that, actually, I  
11 did skip. "Regional data from OCWD WRMS indicate the  
12 direction of groundwater flow in the Talbert Aquifer  
13 beneath the site is toward the south."  
14 Did I read that correctly?  
15 A. Yes.  
16 Q. Do you agree with that statement?  
17 A. I -- I don't disagree with it. Yes, I think  
18 it -- it's accurate.  
19 Q. Okay. Now, looking back at what had been  
20 marked as Exhibit 119, the map, why does the District  
21 feel -- the District or Hargis, I should say, feel the  
22 need to do cone penetration testing and HydroPunch  
23 testing at this particular station?  
24 MR. AXLINE: Objection. Vague. Calls for  
25 speculation.

Page 1686

1 THE WITNESS: I would say my understanding  
2 is -- is because MTBE has not been contained at this  
3 site and has escaped the remediation. And the District  
4 wants to know more about the delineation and the extent  
5 of -- of the MTBE that has escaped.  
6 BY MR. FINSTEN:  
7 Q. Now, there are three proposed CPT locations to  
8 the south and the southeast, A-1905E, F, and G.  
9 Do you agree?  
10 A. I agree that those proposed locations are south  
11 and slightly southeast of the site.  
12 Q. So those would be downgradient from the  
13 potential contamination source, correct?  
14 MR. AXLINE: Objection. Mischaracterizes prior  
15 testimony.  
16 THE WITNESS: They are -- as was indicated,  
17 the -- in the semi-perched aquifer, Hargis indicates  
18 that the flow is generally towards the southeast.  
19 However, has varied at times. So at times when the flow  
20 is to the southeast, again, generally, these wells could  
21 be considered downgradient.  
22 But then as you go down into the -- the deeper  
23 aquifer, which I guess has been referred to as the  
24 deeper A zone by Hargis, the flow -- and I guess --  
25 they're calling it deeper A zone. I think somewhere

Page 1687

1 else in the report, Hargis indicates that the deeper A  
2 zone may correlate with the Talbert Aquifer, so --  
3 BY MR. FINSTEN:  
4 Q. So they indeed say that --  
5 A. Yeah.  
6 Q. -- in the prior paragraph?  
7 A. Yes.  
8 Q. So the upper semi-perched zone -- I didn't mean  
9 to interrupt you --  
10 A. Sure.  
11 Q. -- but just for clarification point, the upper  
12 semi-perched zone correlates with the upper portion of  
13 the regional semi-perched aquifer, and the deeper A zone  
14 may correlate with the regional Talbert Aquifer?  
15 A. I see that.  
16 Q. Do you see that?  
17 MR. AXLINE: Counsel, do you mind specifying  
18 for the record where you are reading?  
19 MR. FINSTEN: I am reading from page 3 of the  
20 Hargis site summary, Exhibit 120, the middle paragraph.  
21 MR. AXLINE: Thank you.  
22 THE WITNESS: So -- so in the Talbert Aquifer,  
23 or if we also want to call it the deeper A zone, then  
24 Hargis indicates that the direction of groundwater flow  
25 in that vicinity is -- is towards the south. So, again,

7 (Pages 1684 to 1687)

## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1688</p> <p>1 those monitoring wells -- or those proposed CPT<br/> 2 locations would appear to be generally downgradient from<br/> 3 the site.<br/> 4 BY MR. FINSTEN:<br/> 5 Q. Now, there are four other CPT locations<br/> 6 associated with this site, but they are all to the north<br/> 7 or northeast of the station; is that correct?<br/> 8 A. That's correct.<br/> 9 Q. Why is the District seeking to conduct CPT and<br/> 10 HydroPunch testing at those locations?<br/> 11 MR. AXLINE: Objection. Vague. Calls for<br/> 12 speculation.<br/> 13 THE WITNESS: I'm sure Hargis described --<br/> 14 described this to us when we met. I recall having<br/> 15 detailed explanations from them on their rationale for<br/> 16 the locations proposed. As we sit here right now, I --<br/> 17 I would be speculating as to why there are four<br/> 18 locations proposed to the north or northeast of the<br/> 19 site.<br/> 20 BY MR. FINSTEN:<br/> 21 Q. Now, three of those locations are along the<br/> 22 northern edge or perhaps the sidewalk, as we discussed,<br/> 23 along Talbert Avenue, correct?<br/> 24 A. Yes.<br/> 25 Q. All right. And there is another service</p>                                                  | <p style="text-align: right;">Page 1690</p> <p>1 round.<br/> 2 After that, it is contemplated that monitoring<br/> 3 wells would be constructed to further refine the<br/> 4 information from the CPTs. And if monitoring wells are<br/> 5 constructed, then they would allow further information<br/> 6 in terms of gradient determination, and that information<br/> 7 could be used to help evaluate the source of this -- of<br/> 8 the MTBE if it's found in those four<br/> 9 northerly/northeasterly CPTs.<br/> 10 BY MR. FINSTEN:<br/> 11 Q. So if monitoring wells were constructed and<br/> 12 they determined that those CPT tests are actually<br/> 13 upgradient from the ARCO station, that would indicate<br/> 14 that ARCO wouldn't have been the source of the MTBE<br/> 15 there?<br/> 16 MR. AXLINE: Objection. Mischaracterizes<br/> 17 testimony. Vague. Calls for speculation.<br/> 18 THE WITNESS: The monitoring wells would<br/> 19 provide further information as to the gradient both in<br/> 20 the semi-perched zone and the deeper A zone or Talbert<br/> 21 Aquifer, and that may change possibly the existing<br/> 22 interpretation of the gradient in that -- in that area,<br/> 23 because it will be providing additional information that<br/> 24 may change whether they are upgradient or downgradient<br/> 25 of the ARCO 1905 site.</p>              |
| <p style="text-align: right;">Page 1689</p> <p>1 station with monitoring wells to the north -- on the<br/> 2 northeast corner of the intersection.<br/> 3 Do you see that?<br/> 4 A. I do.<br/> 5 Q. So my next question would be if the<br/> 6 CPT/HydroPunching does result in findings of MTBE<br/> 7 contamination, how can the District or Hargis be certain<br/> 8 that that contamination originates from the ARCO<br/> 9 station?<br/> 10 MR. AXLINE: Objection. Vague. Calls for<br/> 11 speculation.<br/> 12 THE WITNESS: It -- if MTBE is found in any of<br/> 13 those northerly or northeasterly CPT locations, it would<br/> 14 remain to be seen whether that information would be<br/> 15 definitive as to the source of the MTBE, and it may<br/> 16 warrant additional investigation before Hargis could<br/> 17 draw a conclusion.<br/> 18 BY MR. FINSTEN:<br/> 19 Q. Could you explain that a little bit?<br/> 20 MR. AXLINE: Same objection.<br/> 21 THE WITNESS: Well, the proposed CPT locations<br/> 22 are the first round of CPTs of potentially a few lines<br/> 23 or -- or series of locations of CPTs that are in the<br/> 24 Hargis work plans. So additional CPT locations are<br/> 25 planned, if needed, based on the results of the first</p> | <p style="text-align: right;">Page 1691</p> <p>1 BY MR. FINSTEN:<br/> 2 Q. Are there any circumstances where -- let me<br/> 3 rephrase that.<br/> 4 Under what circumstances would the results of<br/> 5 the CPT testing indicate that there would be no need for<br/> 6 further CPT testing at the site?<br/> 7 MR. AXLINE: Objection. Vague. Calls for<br/> 8 speculation.<br/> 9 THE WITNESS: My understanding is that -- and I<br/> 10 can't remember if it was -- I don't remember that we --<br/> 11 that it wasn't the same for all the sites, but that if<br/> 12 the first round of CPT testing did not identify any MTBE<br/> 13 in any of the CPTs or potentially -- you know, one<br/> 14 follow-up option that we may employ that's part of the<br/> 15 scope is to do infill CPTs, where we would potentially<br/> 16 install CPTs in between some of the first round of CPTs.<br/> 17 And so that is something that could very likely<br/> 18 be done if we -- even if we don't find MTBE or even if<br/> 19 we do find MTBE in some of these locations, Hargis may<br/> 20 recommend installing more closely spaced CPTs in between<br/> 21 the ones that we see on this map.<br/> 22 BY MR. FINSTEN:<br/> 23 Q. Okay. Are there any circumstances where<br/> 24 there -- where Hargis could conclude that no further CPT<br/> 25 testing would be necessary at the site?</p> |

8 (Pages 1688 to 1691)



## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1692</p> <p>1 MR. AXLINE: Objection. Vague. Calls for<br/>2 speculation.<br/>3 THE WITNESS: Well, one, I don't think Hargis<br/>4 would be in a position to make that final conclusion. I<br/>5 think it would be up to the District to decide. They<br/>6 may make a recommendation, but I think it ultimately<br/>7 would be up to the District to decide whether it agrees<br/>8 or doesn't agree with recommendations from Hargis.<br/>9 BY MR. FINSTEN:<br/>10 Q. Are there any circumstances where the District<br/>11 would conclude that no further CPT testing would be<br/>12 necessary at the site?<br/>13 MR. AXLINE: Same objection.<br/>14 THE WITNESS: As we state here right now, I --<br/>15 I don't see any particular circumstances that would<br/>16 cause us to not do any additional CPT testing after<br/>17 these initial CPTs are constructed.<br/>18 BY MR. FINSTEN:<br/>19 Q. So if there's no MTBE found in any of the CPT<br/>20 borings, the District will then -- it is likely to --<br/>21 will have Hargis do infill testing. What if there's<br/>22 still no CPT -- MTBE found in the CPT testing? Is there<br/>23 a point where the District would plan on stopping this?<br/>24 MR. AXLINE: Same objection. Vague. Calls for<br/>25 speculation.</p> | <p style="text-align: right;">Page 1694</p> <p>1 MR. AXLINE: No. That's -- go ahead.<br/>2 BY MR. FINSTEN:<br/>3 Q. Has anyone from the District or Hargis reviewed<br/>4 documents more recently than May 22nd, 2008?<br/>5 A. Yes.<br/>6 Q. And who has done that?<br/>7 A. I did.<br/>8 Q. And you did that in preparation for the<br/>9 deposition?<br/>10 A. Yes.<br/>11 Q. Had anybody -- prior to preparing for the<br/>12 deposition, had anybody from the District or Hargis<br/>13 reviewed documents relating to this station that had<br/>14 been created since May 22nd, 2008?<br/>15 A. Just to make sure I'm clear, did -- are you<br/>16 asking if Hargis reviewed any documents subsequent to<br/>17 May 22nd, 2008?<br/>18 Q. Hargis or the District.<br/>19 A. Or the District?<br/>20 MR. AXLINE: Objection. Partially asked and<br/>21 answered.<br/>22 MR. FINSTEN: I --<br/>23 MR. AXLINE: Maybe you could -- maybe you could<br/>24 limit it to -- do it one bite at a time, Counsel.<br/>25 MR. FINSTEN: Okay. Sure.</p>                                                                                                                                                         |
| <p style="text-align: right;">Page 1693</p> <p>1 THE WITNESS: Infill testing is one follow-up<br/>2 action that is an option for the District. Another<br/>3 follow-up option is stepping outward or in a different<br/>4 direction to make sure that we have not missed the<br/>5 escape of MTBE.<br/>6 BY MR. FINSTEN:<br/>7 Q. And we've already marked the Hargis site<br/>8 summary, Exhibit 120. If we could flip to that.<br/>9 <u>Hargis has done work relating to the station</u><br/>10 <u>prior to including it in the July work plan in the form</u><br/>11 <u>of this site summary, correct?</u><br/>12 A. That's correct.<br/>13 Q. Now, looking at the site summary, it says on<br/>14 the first page, "Latest document reviewed May 22nd,<br/>15 2008."<br/>16 Do you see that?<br/>17 A. Yes.<br/>18 Q. Now, the documents that were reviewed by Hargis<br/>19 in preparation of this report were either publicly<br/>20 available GeoTracker reports for the station or<br/>21 documents produced by the parties in this litigation,<br/>22 correct?<br/>23 A. That would be my understanding.<br/>24 MR. FINSTEN: Sorry. Did you have an objection<br/>25 to make?</p>                                                                                                                                   | <p style="text-align: right;">Page 1695</p> <p>1 BY MR. FINSTEN:<br/>2 Q. Limited to the District.<br/>3 A. And I -- and I answered, yes, I have reviewed<br/>4 documents --<br/>5 Q. Right.<br/>6 A. -- since that date.<br/>7 Q. Setting aside preparation for this deposition,<br/>8 has anybody at the District reviewed documents relating<br/>9 to this station since two thousand -- since May 22nd,<br/>10 2008? This is a little confusing. And I apologize. I<br/>11 said that I was going to be as clear as possible about<br/>12 the dates, and that we had a deposition in --<br/>13 December 1st.<br/>14 <u>And just to clarify, this -- well, let's</u><br/>15 <u>establish one -- one thing before that. This document</u><br/>16 <u>is dated February 20th, 2009 on the bottom left. Do you</u><br/>17 <u>see that in the footer?</u><br/>18 A. I see that. It appears to be a date notation.<br/>19 Q. Yes. Do you know when the District received<br/>20 this document from Hargis?<br/>21 A. No, I don't.<br/>22 Q. It would be sometime subsequent to<br/>23 February 20th, 2009?<br/>24 A. That -- that is my understanding.<br/>25 Q. When did you first review this document?</p> |

## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1696</p> <p>1 A. In -- within the last week.</p> <p>2 Q. Do you know who at the District received this</p> <p>3 document when it was sent from Hargis?</p> <p>4 A. I believe David Bolin.</p> <p>5 Q. Okay. And do you know when Mr. Bolin received</p> <p>6 it?</p> <p>7 A. No, I don't.</p> <p>8 Q. It would be somewhere in the neighborhood of</p> <p>9 February of 2009?</p> <p>10 A. I don't know that.</p> <p>11 Q. All right. Now, going back to what I was</p> <p>12 originally asking about. This document -- the first</p> <p>13 page says, "The latest document reviewed by Hargis" --</p> <p>14 well, it says, "The latest document reviewed is</p> <p>15 May 22nd, 2008."</p> <p>16 Now, I take that to mean that in preparing this</p> <p>17 document, Hargis reviewed -- the last document dated --</p> <p>18 I can't say this properly. Strike that.</p> <p>19 Hargis did not review any documents that were</p> <p>20 created after May 22nd, 2008 in preparing this site</p> <p>21 summary. That's -- is that your understanding as well?</p> <p>22 A. Based on what they state here, I -- I don't</p> <p>23 have any reason to disagree with that.</p> <p>24 Q. Okay. So to try to focus the question here in</p> <p>25 an appropriate way, aside from your review of documents</p>      | <p style="text-align: right;">Page 1698</p> <p>1 Q. What sort of guidance did Orange County Water</p> <p>2 District give Hargis about this station in preparation</p> <p>3 of the site summary?</p> <p>4 MR. AXLINE: Objection. Lacks foundation.</p> <p>5 Assumes facts. Vague.</p> <p>6 THE WITNESS: I believe it would have been --</p> <p>7 the details of -- of their scope of work would have been</p> <p>8 stated in their -- in their proposal to us for that --</p> <p>9 for that work that they were proposing on. I just --</p> <p>10 I'd have to refer to that to see specifically what --</p> <p>11 what they proposed and what the District approved in</p> <p>12 terms of a -- a -- a scope of work.</p> <p>13 BY MR. FINSTEN:</p> <p>14 Q. Let me see if I can ask it in a little</p> <p>15 different way. Did the District give Hargis any</p> <p>16 instructions about identifying potential pathways to</p> <p>17 the -- to wells in the station's focus plume, for</p> <p>18 instance?</p> <p>19 A. I believe that was -- that issue was covered</p> <p>20 in -- in this -- in this document.</p> <p>21 Q. Okay.</p> <p>22 A. So it appears to be it was part of their scope</p> <p>23 of work.</p> <p>24 Q. Did the District give Hargis any guidance about</p> <p>25 what they were supposed to do in creating this document?</p> |
| <p style="text-align: right;">Page 1697</p> <p>1 relating to the station in preparation for the</p> <p>2 deposition, had anybody at the Water District reviewed</p> <p>3 documents relating to this station created after</p> <p>4 May 22nd, 2008?</p> <p>5 MR. AXLINE: Objection. Vague. Calls for</p> <p>6 speculation.</p> <p>7 THE WITNESS: Other than the Hargis report</p> <p>8 itself, which was created after May 22nd, 2008 and --</p> <p>9 and I have reviewed documents as I've -- the third time</p> <p>10 I think I've said, I -- I have reviewed documents that</p> <p>11 have been created since May 22nd, 2008 relating to this</p> <p>12 site. Oh, you said other than for the preparation of</p> <p>13 this deposition. David Bolin may have, but I don't</p> <p>14 know.</p> <p>15 BY MR. FINSTEN:</p> <p>16 Q. Did he make any effort to communicate whether</p> <p>17 he reviewed documents?</p> <p>18 A. I don't recall him mentioning that, if he did</p> <p>19 or not.</p> <p>20 Q. How about Hargis? Do you know if anybody at</p> <p>21 Hargis had reviewed documents subsequent to May 22nd --</p> <p>22 documents created subsequent to May 22nd, 2008 relating</p> <p>23 to this station?</p> <p>24 A. It's possible they did for preparation of the</p> <p>25 work plan, but I don't know if they did or not.</p> | <p style="text-align: right;">Page 1699</p> <p>1 Is really what I'm trying to get at.</p> <p>2 MR. AXLINE: Objection. Asked and answered.</p> <p>3 THE WITNESS: Yeah. I think I -- I answered</p> <p>4 that question.</p> <p>5 BY MR. FINSTEN:</p> <p>6 Q. Okay. What about did the District give any</p> <p>7 guidance to Hargis or instructions to Hargis about</p> <p>8 looking for commingling with other stations relating to</p> <p>9 ARCO 1905?</p> <p>10 A. I don't recall if that specific objective was</p> <p>11 stated individually, but that certainly to me would have</p> <p>12 been within their scope of work to evaluate that</p> <p>13 possibility.</p> <p>14 Q. Now, you mentioned that you had reviewed the</p> <p>15 site summary within the last week, and that Mr. Bolin,</p> <p>16 you believe, was the one that received the document when</p> <p>17 it was sent from Hargis.</p> <p>18 Was it ever discussed -- "it" being</p> <p>19 Exhibit 120 -- at any meetings within Orange County</p> <p>20 Water District?</p> <p>21 A. I don't recall having discussions about this</p> <p>22 particular Hargis report.</p> <p>23 Q. Do you know if Mr. Bolin discussed it with</p> <p>24 anybody else at the Water District?</p> <p>25 A. Not that I know of.</p>                                                                  |

10 (Pages 1696 to 1699)

## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1700</p> <p>1 Q. And aside from commissioning and receiving this</p> <p>2 report, has the District taken any other steps to</p> <p>3 investigate or remediate MTBE contamination at this</p> <p>4 station since 2008?</p> <p>5 A. Yes.</p> <p>6 Q. And what would those steps have been?</p> <p>7 A. We -- we commissioned Hargis to evaluate the</p> <p>8 stations -- a number of stations, including this one,</p> <p>9 for potential future investigation and -- and, in fact,</p> <p>10 Hargis did make a recommendation and developed at least</p> <p>11 an initial scope of work to -- to do CPT work or CPT</p> <p>12 investigation at -- at this station.</p> <p>13 Q. And I already asked you about communications</p> <p>14 with the Regional Board and the Health Care Agency.</p> <p>15 Has the District contacted any other local,</p> <p>16 state or federal regulator about this station since</p> <p>17 2008?</p> <p>18 A. Not that I'm aware of.</p> <p>19 Q. How about, has the District made any public</p> <p>20 statements relating to this station since 2008?</p> <p>21 A. Not specific to this station that I'm aware of.</p> <p>22 Q. What else has the District done with this</p> <p>23 report, Exhibit 120, since receiving it?</p> <p>24 MR. AXLINE: Objection. Vague.</p> <p>25 THE WITNESS: Other than what we've talked</p>                    | <p style="text-align: right;">Page 1702</p> <p>1 as wells impacted by the sites in Focus Plume 3.</p> <p>2 Q. Okay. Just to clarify, I want to show you what</p> <p>3 has previously been marked as Exhibit 7. And this is --</p> <p>4 I'm not going to mark it again. It's not labeled as</p> <p>5 Exhibit 7, but it's a -- it is a copy of the Plaintiff</p> <p>6 Orange County Water District's motion to amend the</p> <p>7 bellwether plume designation. It is -- was filed on</p> <p>8 April 22nd, 2009. And I have -- just to be clear about</p> <p>9 what you're looking at, this is the motion letter to</p> <p>10 Judge Scheindlin. And I included only one exhibit,</p> <p>11 which was Exhibit 2, which is the back page of this, and</p> <p>12 that lists the bellwether plume list comparison that was</p> <p>13 proposed.</p> <p>14 And if you look at the back page for Plume</p> <p>15 No. 3, we see OCWD M-10, M-11, M-45, and then no changes</p> <p>16 proposed. The only thing I would caution is that the</p> <p>17 final column here, final bellwether plume well</p> <p>18 designations, was proposed and not ordered by the Court.</p> <p>19 The Court ordered something different.</p> <p>20 But at least as of the time of this motion,</p> <p>21 there were no changes; these were the only three wells</p> <p>22 that were designated as part of this focus plume,</p> <p>23 correct?</p> <p>24 MR. AXLINE: I'm going to object to that as</p> <p>25 vague. Compound. Calls for a legal conclusion. Calls</p> |
| <p style="text-align: right;">Page 1701</p> <p>1 about, I can't think of anything.</p> <p>2 BY MR. FINSTEN:</p> <p>3 Q. Okay. Let's -- you can flip back to the</p> <p>4 notice. I just want to confirm that this station is --</p> <p>5 and, in fact, I believe all of these stations are in</p> <p>6 Focus Plume 3, and the current wells in Focus Plume 3</p> <p>7 are OCWD M-10, OCWD M-11, and OCWD M-45, and no others,</p> <p>8 correct?</p> <p>9 Before -- I referred you to that for</p> <p>10 convenience. There's another exhibit that I can show</p> <p>11 you which should confirm that if you -- because that's</p> <p>12 just my own representations.</p> <p>13 A. Sure. I guess -- you said there were no other</p> <p>14 wells in the focus plume. I -- I guess I would clarify</p> <p>15 that I believe those three wells that you mentioned</p> <p>16 are -- were designated wells or wells designated by</p> <p>17 OCWD.</p> <p>18 I'm sorry. I thought I turned this off.</p> <p>19 So I -- I don't know that these are the --</p> <p>20 those were the only wells in Focus Plume 3, but they</p> <p>21 were the designated wells for Focus Plume 3.</p> <p>22 Q. Could you explain the difference?</p> <p>23 A. Well, there may be other wells such as</p> <p>24 production wells in -- that are within Focus Plume 3,</p> <p>25 but they aren't necessarily wells that were designated</p> | <p style="text-align: right;">Page 1703</p> <p>1 for speculation as to what occurred with this document</p> <p>2 and with the Court. So maybe, Counsel, you -- if</p> <p>3 there's a question here, you could phrase it in the form</p> <p>4 of a question?</p> <p>5 MR. FINSTEN: Okay.</p> <p>6 BY MR. FINSTEN:</p> <p>7 Q. OCWD M-10, M-11, and M-45 were the only three</p> <p>8 wells in this focus plume, correct?</p> <p>9 MR. AXLINE: Object. It misstates prior</p> <p>10 testimony. The witness has been distinguishing between</p> <p>11 wells present and wells designated. The exhibit that</p> <p>12 you're referring him to says final bellwether plume well</p> <p>13 designations. You're now repeating the question without</p> <p>14 acknowledging the witness' distinction.</p> <p>15 MR. FINSTEN: Okay.</p> <p>16 BY MR. FINSTEN:</p> <p>17 Q. What other wells besides these three wells are</p> <p>18 in the focus plume?</p> <p>19 A. And not to be cute or anything, obviously there</p> <p>20 are a number of wells in focus plume. There are</p> <p>21 monitoring wells constructed by the various stations.</p> <p>22 So there's all those wells that are wells. They're in</p> <p>23 the plume. But there are also production wells within</p> <p>24 Focus Plume 3.</p> <p>25 I am referring to a Plume 3 location map, which</p>                                                                                                                                                                              |

11 (Pages 1700 to 1703)

## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1704</p> <p>1 has I think been produced in the past, and I see some<br/> 2 Newport Beach production wells. I see some Mesa<br/> 3 Consolidated production wells. I see a couple of<br/> 4 Fountain Valley production wells, and I see at least<br/> 5 another monitoring well that are within the focus plume.<br/> 6 Q. So the focus plume is a geographic area on the<br/> 7 surface that contains all of the wells within it?<br/> 8 A. I think the focus plume description and<br/> 9 definition have been covered in prior depositions, but<br/> 10 the focus plume map I'm referring to shows a geographic<br/> 11 area, and it does -- at least this particular map shows<br/> 12 the wells that I mentioned fall within that geographic<br/> 13 area.<br/> 14 Q. None of those wells are designated by the<br/> 15 District as part of this focus plume, correct?<br/> 16 A. The only designated wells are the Wells M-10,<br/> 17 M-11, and M-45.<br/> 18 Q. You mentioned some Newport Beach, Fountain<br/> 19 Valley and Mesa Consolidated wells that are allegedly in<br/> 20 the plume?<br/> 21 A. They are within the geographic area of this<br/> 22 focus -- of Focus Plume 3, yes.<br/> 23 Q. And which wells are you referring to?<br/> 24 A. I see NB-DALS, NB-DALD, FV-4, FV-10, MCWD-5,<br/> 25 MCWD-7. It looks like MCWD-3B may be right on the edge.</p> | <p style="text-align: right;">Page 1706</p> <p>1 MR. AXLINE: I'm going to object to that as<br/> 2 vague.<br/> 3 THE COURT REPORTER: Do you want it read back?<br/> 4 THE WITNESS: Sure.<br/> 5 (The following record was read by the reporter:<br/> 6 "Q. Since 2008, has the District<br/> 7 determined that MTBE from the station has<br/> 8 impacted or threatened any of these three<br/> 9 designated focus wells, OCWD M-10, M-11, and<br/> 10 M-45?")<br/> 11 MR. AXLINE: Same objection.<br/> 12 THE WITNESS: I believe the District had made<br/> 13 that conclusion prior to 2008, and I don't think<br/> 14 anything subsequent to 2008 has changed that.<br/> 15 BY MR. FINSTEN:<br/> 16 Q. What has the District based its determination<br/> 17 on?<br/> 18 MR. AXLINE: I'm going to object to that as<br/> 19 outside the scope of the notice and the order from<br/> 20 Special Master Warner. The witness just testified that<br/> 21 the determination was made before 2008. And I'm not<br/> 22 going to allow you to question the witness with respect<br/> 23 to that determination prior to 2008.<br/> 24 BY MR. FINSTEN:<br/> 25 Q. Has the District uncovered any information</p>                                                                                                                                                                                                                                    |
| <p style="text-align: right;">Page 1705</p> <p>1 And I also see -- well, those are the production wells<br/> 2 that I -- that I see that appear to fall within the --<br/> 3 the Focus Plume No. 3.<br/> 4 Q. Okay. Just stopping with MCWD-5, MCWD-7 and<br/> 5 MCWD-3B, those were designated by the District as part<br/> 6 of a different focus plume, correct?<br/> 7 A. I believe they were designated as part of a --<br/> 8 I think we have the --<br/> 9 Q. Focus Plume 2.<br/> 10 A. Focus Plume 2, correct.<br/> 11 Q. Okay. And the Newport Beach and Fountain<br/> 12 Valley Beach -- Fountain Valley wells that you just<br/> 13 identified, those are not designated as part of this<br/> 14 plume, correct?<br/> 15 A. That's correct.<br/> 16 Q. Okay. All right. I'll move on.<br/> 17 Since 2008, has the District determined that<br/> 18 MTBE from the station has impacted or threatens any of<br/> 19 these three designated focus wells, MC -- OCWD M-10,<br/> 20 M-11, and M-45?<br/> 21 MR. AXLINE: Was your -- sorry, Counsel. Just<br/> 22 to clarify, was your question since 2008?<br/> 23 MR. FINSTEN: Yes.<br/> 24 BY MR. FINSTEN:<br/> 25 Q. Do you want it read back?</p>                                                                                                                                                                                                         | <p style="text-align: right;">Page 1707</p> <p>1 since 2008 specifically that supports or confirms its<br/> 2 determination that MTBE from 1905 had affected or had<br/> 3 impacted or threatened these three focus wells?<br/> 4 A. I believe the Hargis report that the District<br/> 5 received subsequent to 2008 supports that District<br/> 6 determination.<br/> 7 Q. Okay. Well, let's take a look at the Hargis<br/> 8 report again. The Hargis site summary mentions OCWD<br/> 9 M-10 on the first page, the last bullet point on the<br/> 10 first page. "Regional Monitoring Well M-10 located<br/> 11 approximately one hundred" -- "1,160 feet south of the<br/> 12 site. It was installed in 1967 and is screened between<br/> 13 80 and 305 feet below ground surface in the Talbert,<br/> 14 Beta, Lambda and Omicron Aquifers with unknown sanitary<br/> 15 seal status."<br/> 16 Did I read that correctly?<br/> 17 A. I believe so.<br/> 18 Q. Okay. And aside from that mention of M-10,<br/> 19 which again is identified in the -- on Bates<br/> 20 page 418099, what is the indication that -- or what is<br/> 21 the -- what are you referring to, I guess, from the<br/> 22 report other than mentioning those -- other than the<br/> 23 identification of that well on those two instances?<br/> 24 A. Well, I guess I was thinking maybe a little<br/> 25 more broadly, but the report identifies a number of</p> |

12 (Pages 1704 to 1707)



## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1708</p> <p>1 issues such as plumes -- MTBE plumes not being fully<br/> 2 investigated, including vertical extent, the lateral<br/> 3 extent, no hydraulic containment. That that basically<br/> 4 indicates that plumes have escaped remediation and,<br/> 5 therefore, are likely sources of the MTBE that was found<br/> 6 in -- in the M-10, M-11, and M-45.<br/> 7 Q. I guess my specific question was: What is the<br/> 8 basis for the District's determination that that<br/> 9 contamination specifically from this station impacted or<br/> 10 threatened these three production wells?<br/> 11 MR. AXLINE: Okay. And that's the question<br/> 12 that I objected to on the grounds that it had been the<br/> 13 subject of the prior deposition, so --<br/> 14 MR. FINSTEN: And I clarified the question to<br/> 15 say since 2008, what has the District learned about --<br/> 16 to support that determination, and he pointed me towards<br/> 17 this. So I want to know what's in this that<br/> 18 specifically supports the District's contention<br/> 19 regarding this station.<br/> 20 MR. AXLINE: Okay. And if that's the question,<br/> 21 I'm going to object that it's been asked and answered.<br/> 22 THE WITNESS: I think I -- I answered that. I<br/> 23 mentioned that I mentioned some of the findings in the<br/> 24 report that support our -- our --<br/> 25 ///</p> | <p style="text-align: right;">Page 1710</p> <p>1 80 pages long. You're asking the witness to search the<br/> 2 documents for references to wells, and I'm not going to<br/> 3 have the witness do that in front of the camera.<br/> 4 MR. FINSTEN: All right. We can go off the<br/> 5 record. If you want to go off the record, that's fine.<br/> 6 I mean, I just thought it would save time. I didn't<br/> 7 mean to be rude. You can go off the record.<br/> 8 THE VIDEOGRAPHER: With the approval of<br/> 9 counsel, we are going off the record. The time is<br/> 10 approximately 10:53.<br/> 11 (Brief recess.)<br/> 12 THE VIDEOGRAPHER: With the approval of<br/> 13 counsel, we are being back on the record. The time is<br/> 14 approximately 10:54.<br/> 15 BY MR. FINSTEN:<br/> 16 Q. Mr. Herndon, were you able to identify any<br/> 17 discussion of OCWD M-11 or M-45 in the Hargis site<br/> 18 summary?<br/> 19 A. I was not able to find any narrative discussion<br/> 20 on those two monitoring wells in this Hargis report.<br/> 21 Q. Looking at page 2, they do -- there are --<br/> 22 there is some discussion of production wells NB-TAMS and<br/> 23 TAMD in the bullet point in the middle of the paragraph<br/> 24 there, correct?<br/> 25 A. Yes.</p> |
| <p style="text-align: right;">Page 1709</p> <p>1 BY MR. FINSTEN:<br/> 2 Q. There's no mention --<br/> 3 A. -- feeling.<br/> 4 Q. There's no mention of MC -- OCWD M-11 in this<br/> 5 report, correct?<br/> 6 A. I would have to refer to the whole report to<br/> 7 see if there's no mention of -- of OCWD M-11 anywhere<br/> 8 in -- in this whole report.<br/> 9 Q. Or M-45?<br/> 10 A. Of -- or M-45.<br/> 11 Q. Why don't you go ahead and take a minute.<br/> 12 MR. AXLINE: Should we do that off the record,<br/> 13 Counsel?<br/> 14 MR. FINSTEN: How long will it take?<br/> 15 MR. AXLINE: Well, I don't know. It's a<br/> 16 lengthy document.<br/> 17 THE WITNESS: Well, I -- I found a figure,<br/> 18 Bates No. 418120, that shows a location map, and I see<br/> 19 M-11 on that -- on that map. I have to spend a little<br/> 20 bit more time to see if M-45 is on it, but I --<br/> 21 BY MR. FINSTEN:<br/> 22 Q. I see it's on there, but there's no discussion<br/> 23 of either of these two wells in the document, is there?<br/> 24 MR. AXLINE: Okay. For the record, I'm going<br/> 25 to note that this document is some, I don't know, 75 or</p>                                                                                                                                                                                                                                                             | <p style="text-align: right;">Page 1711</p> <p>1 Q. And those are part of a different -- those have<br/> 2 been designated as part of a different focus plume,<br/> 3 correct, Focus Plume 1?<br/> 4 A. I -- I -- believe so. I know at least one of<br/> 5 those has been designated as part of Focus Plume 1.<br/> 6 Actually, as I look at the exhibit --<br/> 7 Q. Exhibit 7?<br/> 8 A. Yes.<br/> 9 Q. And I would just again caution you that that<br/> 10 last column was proposed by the District, not accepted<br/> 11 by the Court.<br/> 12 A. Okay.<br/> 13 Q. But -- you know, but I -- that being said, I'm<br/> 14 fairly certain that we did not object to TAMS being<br/> 15 added to that focus plume.<br/> 16 A. Okay. I -- just so you know, I -- this -- this<br/> 17 hasn't been marked as a -- as an exhibit.<br/> 18 Q. Yeah. I gave you a copy.<br/> 19 A. Oh, okay.<br/> 20 Q. It had been previously marked as Exhibit 7.<br/> 21 A. Oh, okay.<br/> 22 Q. And I apologize. If you want to mark it, I<br/> 23 mean, there's -- it's a part of the record already.<br/> 24 A. Oh, okay.<br/> 25 Q. I may do that with a few other documents.</p>                                                                                                                |

13 (Pages 1708 to 1711)

Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1716</p> <p>1 MR. AXLINE: Objection. Vague. Lacks<br/>2 foundation. Mischaracterizes prior testimony.<br/>3 THE WITNESS: Could you clarify if we're<br/>4 talking about any of the four stations for today's depo?<br/>5 MR. FINSTEN: We're talking about -- we're just<br/>6 taking about 1905.<br/>7 THE WITNESS: Okay.<br/>8 MR. AXLINE: I'm going to object again as vague<br/>9 and lacking foundation. And you're not being clear in<br/>10 the context in which you're asking this question. I'm<br/>11 sincere. I think it's incredibly vague.<br/>12 MR. FINSTEN: Since 2008, I just asked him, has<br/>13 the District engaged in any soil vapor survey at this<br/>14 station. He said he didn't believe so.<br/>15 MR. AXLINE: Oh, okay. That's a fair question.<br/>16 MR. FINSTEN: Okay. I'm limiting all of this<br/>17 to 2008, if that was your objection.<br/>18 MR. AXLINE: No. No. You prefaced the<br/>19 question with some references to Mr. Bolin's testimony<br/>20 and a few other things. But if your question is simply<br/>21 has the District conducted soil vapor surveys of the<br/>22 station since 2008, I have no objection to that<br/>23 question.<br/>24 MR. FINSTEN: The Bolin thing was just for<br/>25 context. Sorry. It probably should been left alone.</p>                            | <p style="text-align: right;">Page 1718</p> <p>1 THE WITNESS: I -- I suppose there could be<br/>2 a -- a circumstance hypothetically where the District<br/>3 could make that determination.<br/>4 BY MR. FINSTEN:<br/>5 Q. What kind of circumstances would cause the<br/>6 District to determine that it needed to do a soil vapor<br/>7 survey prior to the completion of the CPT first scope of<br/>8 work?<br/>9 MR. AXLINE: Same objection.<br/>10 THE WITNESS: I -- I would be speculating on a<br/>11 hypothetical. I think it's -- it's really hard for me<br/>12 to -- to come up with something that I could draw back<br/>13 to -- to this particular site.<br/>14 BY MR. FINSTEN:<br/>15 Q. Does the District have any concrete plans to do<br/>16 a soil vapor survey at any point in time in the future?<br/>17 A. On this ARCO station?<br/>18 Q. On this ARCO station. All these questions are<br/>19 limited to this ARCO station.<br/>20 A. It's not currently in our plans.<br/>21 MR. FINSTEN: Okay. Could I have my question<br/>22 read back.<br/>23 THE COURT REPORTER: The last question was:<br/>24 "Does the District have any concrete plans to do any<br/>25 soil vapor surveys at any point in the future?"</p>                                                                                                                                            |
| <p style="text-align: right;">Page 1717</p> <p>1 BY MR. FINSTEN:<br/>2 Q. All right. Has the District ruled out the need<br/>3 to do a soil vapor survey at this site?<br/>4 A. We have not ruled that out.<br/>5 Q. Is that something that you would do subsequent<br/>6 to the CPT testing?<br/>7 A. It's possible -- it -- it's possible it could<br/>8 be, but it's not -- it's not currently in our -- in the<br/>9 immediate scope of work.<br/>10 Q. Would it be something that would not be done<br/>11 until after the immediate scope of work was completed?<br/>12 A. It's -- it's not within the current scope of<br/>13 work. So unless we made some determination that it<br/>14 should be done, even though we haven't maybe finished<br/>15 the -- this CPT scope of work, that we somehow decided<br/>16 we needed this soil vapor survey information and we need<br/>17 to either add it to Hargis' scope or develop another<br/>18 parallel activity. If we don't make that determination,<br/>19 then I suppose it would come after -- afterwards.<br/>20 Q. Okay. Is this -- are there any circumstances<br/>21 where -- that it might not -- where the District might<br/>22 not wait until the first scope of work is complete at<br/>23 this station to initiate this?<br/>24 MR. AXLINE: Objection. Vague. Calls for<br/>25 speculation.</p> | <p style="text-align: right;">Page 1719</p> <p>1 BY MR. FINSTEN:<br/>2 Q. Okay. Let's look up a little higher in the<br/>3 document, "Detailed contaminant hydrogeologic analysis,<br/>4 existing data and information."<br/>5 Is this a step that Hargis completed by<br/>6 compiling the site summary?<br/>7 A. I would say what they did certainly falls<br/>8 within that category, within that description. I don't<br/>9 know if that -- the -- I wouldn't necessarily say that<br/>10 the work that Hargis did completes that entire activity,<br/>11 but certainly what they did I would say falls within<br/>12 that -- that description.<br/>13 Q. What else needs to be done to complete that<br/>14 activity?<br/>15 A. Well, there could be -- I mean, again, I'm not<br/>16 saying that the District has made decisions as to what<br/>17 additional activities or -- or analyses need to be done<br/>18 for this site as it pertains to this description. So,<br/>19 again, I -- I could be hypothetically saying what<br/>20 additional work might need to be done, but this implies<br/>21 existing data and information.<br/>22 It tells me that the idea here was to not --<br/>23 that this was not to go out and collect existing -- or<br/>24 collect additional data, but to look at existing data<br/>25 and information and to perform detailed contaminant</p> |

15 (Pages 1716 to 1719)

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1720</p> <p>1 hydrogeologic analysis. And the District has not<br/>2 completed that -- that work.<br/>3 Q. I guess -- and my question is: What does the<br/>4 District need to do to complete that work?<br/>5 A. Okay. And your word is "need to do." And I<br/>6 guess we don't know yet what we need to do to complete<br/>7 the work. It's -- to me it's what additional work could<br/>8 be done within that, and I would say fate and transport<br/>9 analysis could be -- could be performed and would likely<br/>10 need to be performed, and that that could be done using<br/>11 existing data information. It doesn't necessarily have<br/>12 to wait for additional information. And the District<br/>13 has not done that work.<br/>14 Q. Okay. Does the District have any plans to do<br/>15 any fate or transport analysis at this station in the<br/>16 next year?<br/>17 A. I would say that is likely, but the District<br/>18 has not made that determination yet.<br/>19 Q. Has the District made any determination to do<br/>20 any fate and transport analysis prior to the completion<br/>21 of the data that it is about to gather through Hargis?<br/>22 MR. AXLINE: Objection. Vague.<br/>23 THE WITNESS: I guess, would you -- would<br/>24 you -- do you consider fate and transport analysis to be<br/>25 modeling? Is that -- would that be part of your</p> | <p style="text-align: right;">Page 1722</p> <p>1 hypothetical. If we were to be thinking of doing fate<br/>2 and transport analyses prior to the CPT, why -- why<br/>3 would we do that or why not? So it's kind of a<br/>4 hypothetical on something that we're not planning on<br/>5 doing.<br/>6 Q. Okay.<br/>7 THE VIDEOGRAPHER: A minute.<br/>8 MR. FINSTEN: All right. Why don't we take a<br/>9 break here with that answer to change tapes.<br/>10 THE VIDEOGRAPHER: With the approval of<br/>11 counsel, we are going off the record. The time is<br/>12 approximately 11:11.<br/>13 (Recess.)<br/>14 THE VIDEOGRAPHER: With the approval of<br/>15 counsel, we are back on the record. The time is<br/>16 approximately 11:24. This is the beginning of Tape<br/>17 No. 2.<br/>18 BY MR. FINSTEN:<br/>19 Q. Welcome back, Mr. Herndon. We were discussing<br/>20 Exhibit 6. And I'm now going to ask you about a couple<br/>21 of other items on the -- on the first page of the<br/>22 exhibit, "Contaminant delineation, three dimension,<br/>23 acquire sites for monitoring wells, land purchase,<br/>24 easement, eminent domain."<br/>25 Do you see that?</p>                                                                                                                                                                       |
| <p style="text-align: right;">Page 1721</p> <p>1 question or can -- I'm just trying to narrow it down.<br/>2 BY MR. FINSTEN:<br/>3 Q. Well, it's on -- I mean, it's on the list here.<br/>4 We have modeling and interpretation under fate and<br/>5 transport analysis. And this is -- the question came up<br/>6 in fate -- you raised fate and transport analysis in<br/>7 relation to the line here about detailed contaminant<br/>8 hydrogeologic analysis of existing data and information.<br/>9 And the question that I raised is: Are you<br/>10 going to be doing any fate and transport analysis prior<br/>11 to collecting the data that you plan on collecting at<br/>12 this site?<br/>13 MR. AXLINE: Same objection.<br/>14 THE WITNESS: Not that the District is planning<br/>15 on doing.<br/>16 BY MR. FINSTEN:<br/>17 Q. Why would the District continue doing any fate<br/>18 and transport analysis prior to gathering data about the<br/>19 site?<br/>20 MR. AXLINE: Objection. Vague. Argumentative.<br/>21 THE WITNESS: Since I answered that we are not<br/>22 currently planning to do fate and transport analysis for<br/>23 this station prior to -- and I'm talking modeling type<br/>24 of fate and transport analysis, prior to Hargis' CPT<br/>25 investigation, I would be then answering kind of a</p>                                                                                      | <p style="text-align: right;">Page 1723</p> <p>1 A. Yes.<br/>2 Q. Now, this is on hold until Hargis completes the<br/>3 CPT/HydroPunch sampling, correct?<br/>4 A. As currently scoped, the plan is to -- is to<br/>5 perform the CPT work and then construct the monitoring<br/>6 wells. But during the course of the CPT investigation,<br/>7 I won't rule out the possibility that the District may<br/>8 decide, through discussions with Hargis, that we want to<br/>9 at least begin the process of constructing monitoring<br/>10 wells. So I'm just leaving that option open.<br/>11 Q. But you won't know where to put the monitoring<br/>12 wells until -- until after you have some CPT/HydroPunch<br/>13 analysis, correct?<br/>14 MR. AXLINE: Objection. Vague. Calls for<br/>15 speculation. Mischaracterizes testimony.<br/>16 THE WITNESS: I think our current plan is to at<br/>17 least get the first round of CPTs installed before we<br/>18 would make a determination of -- as to where and how<br/>19 many monitoring wells might be necessary.<br/>20 BY MR. FINSTEN:<br/>21 Q. How likely is it that you will make<br/>22 determinations about where and how many monitoring wells<br/>23 prior to completing the CPT/HydroPunch testing,<br/>24 including whatever infill or outfill you later deem<br/>25 necessary.</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1724</p> <p>1 MR. AXLINE: Objection. Asked and answered.<br/> 2 Calls for speculation.<br/> 3 THE WITNESS: At this -- at this point, it's<br/> 4 hard for me to say how -- how likely it would be. I --<br/> 5 I guess it's -- it's just -- I -- I think at this point,<br/> 6 I -- I think we need to start getting the first round of<br/> 7 CPTs in before I'd be able to get a better idea of how<br/> 8 likely it would be.<br/> 9 BY MR. FINSTEN:<br/> 10 Q. And just to confirm, no steps have been taken<br/> 11 regarding acquiring sites for monitoring wells, correct?<br/> 12 A. Not specific for monitoring wells, no.<br/> 13 Q. Now, the CPT and HydroPunch testing is not on<br/> 14 the list of investigative remediation activity outline<br/> 15 that is Exhibit 6, is it?<br/> 16 MR. AXLINE: Objection. It's outside of the<br/> 17 scope of this deposition notice. You're not asking<br/> 18 about something that has happened since 2008. You're<br/> 19 asking about this list, and you had prior opportunity to<br/> 20 do that. So I'm going to instruct the witness not to<br/> 21 answer.<br/> 22 BY MR. FINSTEN:<br/> 23 Q. Let me rephrase the question so we can avoid<br/> 24 the objection.<br/> 25 The next step that you have decided to</p>                                                                                                     | <p style="text-align: right;">Page 1726</p> <p>1 BY MR. FINSTEN:<br/> 2 Q. The District currently has no concrete plans to<br/> 3 install any monitoring wells at the site, correct?<br/> 4 MR. AXLINE: Objection. Asked and answered.<br/> 5 THE WITNESS: I would say it is very likely<br/> 6 that we will be installing monitoring wells, but we<br/> 7 would like to get at least the initial CPT data before<br/> 8 we make that final determination and -- and -- which<br/> 9 would also help us in terms of location and number of<br/> 10 monitoring wells.<br/> 11 BY MR. FINSTEN:<br/> 12 Q. Has the District since 2008 engaged in any slug<br/> 13 <u>tests, pump tests, or piezometric testing at this site?</u><br/> 14 <u>Pardon me.</u><br/> 15 A. To my knowledge, the District has not performed<br/> 16 <u>any aquifer testing or pump testing specific to this</u><br/> 17 <u>site, nor -- nor has the District installed any</u><br/> 18 <u>piezometers specifically to -- for this site.</u><br/> 19 Q. Does the District have any plans to install<br/> 20 piezometers or conduct any slug tests or pump tests at<br/> 21 this site?<br/> 22 MR. AXLINE: Objection. Lacks foundation.<br/> 23 Vague. Calls for speculation.<br/> 24 THE WITNESS: Well, the piezometers -- the<br/> 25 monitoring wells that we talked about would -- would</p>    |
| <p style="text-align: right;">Page 1725</p> <p>1 pursue -- that the District has decided to pursue, that<br/> 2 of CPT/HydroPunch testing, which it has decided to<br/> 3 pursue since 2008, is not on the list of remediation<br/> 4 activities, is it?<br/> 5 A. Well, I would consider it to be within<br/> 6 contaminant delineation, even though it is not the<br/> 7 words -- the initials CPT is not specifically listed<br/> 8 under that, but I would consider it to be part of<br/> 9 contaminant delineation.<br/> 10 Q. But it's a precursor to installation of<br/> 11 monitoring wells, aquifer testing, monitoring of<br/> 12 those -- groundwater monitoring of the monitoring wells<br/> 13 that are to be installed, correct?<br/> 14 MR. AXLINE: Objection. Mischaracterizes<br/> 15 testimony. Argumentative.<br/> 16 THE WITNESS: As -- as I said, it's possible<br/> 17 that we may decide even as we're continuing the CPT<br/> 18 investigation, that monitoring well installation should<br/> 19 happen sooner even as we continue with the CPT<br/> 20 investigation. So it -- it -- it doesn't necessarily<br/> 21 have to happen sequentially, that CPT happens first,<br/> 22 then monitoring wells, and so on.<br/> 23 We can sometimes -- there may be some<br/> 24 iterations there, that we may actually put CPTs in,<br/> 25 drill some monitoring wells, put additional CPTs in.</p> | <p style="text-align: right;">Page 1727</p> <p>1 serve as piezometers. They -- they would provide water<br/> 2 level data and -- and they also could be used for -- for<br/> 3 slug tests or pump tests. And I -- those types of tests<br/> 4 are -- would be very reasonable things to expect to be<br/> 5 done in the course of constructing and monitoring<br/> 6 monitoring wells.<br/> 7 BY MR. FINSTEN:<br/> 8 Q. But they will not be done prior to the<br/> 9 installation of monitoring wells, correct?<br/> 10 A. I -- I would not anticipate that to be done<br/> 11 prior to the installation of monitoring wells.<br/> 12 Q. Okay. And the routine groundwater monitoring<br/> 13 that's referenced here, sample collection, laboratory<br/> 14 sample analysis, data review and analysis, data<br/> 15 interpretation and reporting, aside from the groundwater<br/> 16 monitoring -- aside from monitoring the reports that are<br/> 17 provided by the remediation consultant at the station,<br/> 18 the District hasn't engaged in any of these steps on its<br/> 19 own, correct, since 2008?<br/> 20 A. Well, it has in terms of the well testing<br/> 21 within Plume 3. It's -- it's collected samples for<br/> 22 monitoring and production wells and performed lab<br/> 23 analysis on it.<br/> 24 Q. Sorry. I'm specific --<br/> 25 A. Sure.</p> |



| Page 1728                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 1730                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 Q. -- to 1905, the station.</p> <p>2 A. Well, I guess to the degree that we have</p> <p>3 designated wells associated with Plume 3, of which 1905</p> <p>4 is one of the stations, then I guess I could -- I would</p> <p>5 say that the monitoring or the testing of -- of the</p> <p>6 designated wells at a minimum would be associated with</p> <p>7 this station.</p> <p>8 Q. You're referring to M-10, M-11, and M-45?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. But in terms of the monitoring wells</p> <p>11 <u>that are currently installed at the station, the</u></p> <p>12 <u>District has not conducted any of its own monitoring of</u></p> <p>13 <u>those -- or sampling of those monitoring wells?</u></p> <p>14 A. No.</p> <p>15 Q. Does it plan to in the future?</p> <p>16 MR. AXLINE: Objection. Vague. Calls for</p> <p>17 speculation.</p> <p>18 THE WITNESS: We don't have current plans for</p> <p>19 that, but I could see that that would be a -- a likely</p> <p>20 possibility that the District would -- if -- if it</p> <p>21 decides to proceed with constructing its own monitoring</p> <p>22 wells, it might wish to access the existing monitoring</p> <p>23 wells to be -- that have already been constructed to be</p> <p>24 able to utilize that information in concert with its own</p> <p>25 monitoring wells.</p> | <p>1 speculation. I believe it mischaracterizes prior</p> <p>2 testimony.</p> <p>3 THE WITNESS: We have not put together a -- a</p> <p>4 schedule. So I don't have a specific time -- time</p> <p>5 schedule in mind as to when this work would be done.</p> <p>6 BY MR. FINSTEN:</p> <p>7 Q. Looking at the next section here, it says,</p> <p>8 "Production well testing."</p> <p>9 For Plume 3, this section doesn't apply because</p> <p>10 these are not production wells, correct?</p> <p>11 MR. AXLINE: Objection. Mischaracterizes prior</p> <p>12 testimony. And vague as to "applies."</p> <p>13 BY MR. FINSTEN:</p> <p>14 Q. Well, let's see. Let me rephrase.</p> <p>15 There's no need to perform any capture zone</p> <p>16 analysis of OCWD M-10, M-11, or M-45 because they don't</p> <p>17 have capture zones, correct?</p> <p>18 A. Well, M-10, M-11, and M-45 are wells designated</p> <p>19 for Plume 3, but as we've talked about, there are</p> <p>20 wells -- other production -- there are production wells</p> <p>21 within Plume 3 for which it's possible that capture zone</p> <p>22 analysis for those production wells would -- would be</p> <p>23 appropriate to be done.</p> <p>24 Q. I'm just talking about the wells that are</p> <p>25 designated for this focus plume.</p>                                                                    |
| Page 1729                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 1731                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>1 BY MR. FINSTEN:</p> <p>2 Q. And fate and transport -- well, let's just</p> <p>3 handle fate and transport and contaminant flow analysis</p> <p>4 together.</p> <p>5 Since 2008, has the District taken any actions</p> <p>6 towards a fate and transport or contaminant flow</p> <p>7 analysis?</p> <p>8 A. Well, the District has taken initial steps by</p> <p>9 utilizing Hargis to at least initially look at I think</p> <p>10 what they call pathway analysis.</p> <p>11 Q. Okay. And that would fall under the category</p> <p>12 of contaminant flow analysis?</p> <p>13 A. I would say -- I would say, yes, that it</p> <p>14 probably more -- generally more falls under that --</p> <p>15 under that category.</p> <p>16 Q. Has the District taken any steps to engage in</p> <p>17 any modeling for fate and transport or contaminant flow</p> <p>18 since 2008 at this station, 1905?</p> <p>19 A. The District has not undertaken modeling for</p> <p>20 those activities for this site in -- since May of 2008</p> <p>21 or since -- since 2008.</p> <p>22 Q. Okay. Having testified that this is something</p> <p>23 the District intends on doing, when does the District</p> <p>24 intend on doing this for this station?</p> <p>25 MR. AXLINE: Objection. Vague. Calls for</p>                                                    | <p>1 A. I would not see -- specific to doing a capture</p> <p>2 zone, since those wells are not production wells, they</p> <p>3 would not have really a -- they would not create a</p> <p>4 capture zone in the sense that a production well would.</p> <p>5 Q. What about nonpumping versus pumping</p> <p>6 conditions, same false distinction for monitoring wells?</p> <p>7 A. For monitoring wells, I -- I don't see that</p> <p>8 that would really apply.</p> <p>9 Q. Okay. And I'm not going to ask these questions</p> <p>10 again when we cover the other stations. This was --</p> <p>11 we're talking about the production or the focus -- the</p> <p>12 designated wells for the focus plume. I'll just go</p> <p>13 through this once, and then we won't have to --</p> <p>14 A. Okay.</p> <p>15 Q. -- deal with it with the rest of the stations.</p> <p>16 MR. AXLINE: I would support that approach.</p> <p>17 BY MR. FINSTEN:</p> <p>18 Q. And what is the volume of water that is pulled</p> <p>19 from these production wells -- or these designated focus</p> <p>20 plume wells?</p> <p>21 A. I don't know specifically, but it would be in</p> <p>22 the several-gallons-per-minute range when the wells are</p> <p>23 being purged and sampled, is -- is my general</p> <p>24 understanding.</p> <p>25 Q. Okay. And what's done with the water that is</p> |

## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1732</p> <p>1 sampled?</p> <p>2 MR. AXLINE: Objection. Vague.</p> <p>3 THE WITNESS: I don't -- my general</p> <p>4 understanding is that it is -- it is discharged under</p> <p>5 a -- under a permit from the Regional Board.</p> <p>6 BY MR. FINSTEN:</p> <p>7 Q. All right. Let's look at page 2 of the</p> <p>8 exhibit. And we'll just skip the nonsite-specific</p> <p>9 portion of this, because we are after all at a</p> <p>10 site-specific deposition.</p> <p>11 Remediation action, system design, system</p> <p>12 installation and system operation, maintenance,</p> <p>13 telemetry, just going down the list here. The District</p> <p>14 has not taken any steps since 2008 in regard to design</p> <p>15 or installation or operation of its own remediation</p> <p>16 system, correct?</p> <p>17 MR. AXLINE: Objection. Mischaracterizes prior</p> <p>18 testimony.</p> <p>19 THE WITNESS: I think the work that -- that the</p> <p>20 District commissioned Hargis to do is a step toward</p> <p>21 remediation.</p> <p>22 BY MR. FINSTEN:</p> <p>23 Q. Okay. Well, let's look at the first one,</p> <p>24 remediation action, remedial action planning, technology</p> <p>25 review and selection.</p>                                          | <p style="text-align: right;">Page 1734</p> <p>1 District need to know about this station prior to</p> <p>2 selecting a remediation technology?</p> <p>3 MR. AXLINE: Objection. Vague. Calls for</p> <p>4 speculation.</p> <p>5 THE WITNESS: I think the District would need</p> <p>6 to understand more about the extent and distribution</p> <p>7 of -- of MTBE and TBA in order to be able to put</p> <p>8 together a specific remediation design, a system design.</p> <p>9 BY MR. FINSTEN:</p> <p>10 Q. So what steps does the District need to take</p> <p>11 prior to determining a remedial system -- design for</p> <p>12 remedial system at the site?</p> <p>13 MR. AXLINE: Same objection. Vague. Calls for</p> <p>14 speculation.</p> <p>15 BY MR. FINSTEN:</p> <p>16 Q. We're going to get CPT and HydroPunch testing.</p> <p>17 We're going to get monitoring well installation.</p> <p>18 Anything else?</p> <p>19 A. Well, that type of information is certainly</p> <p>20 very useful. Fate and transport analysis would be</p> <p>21 useful as well and -- I'm trying to think of -- those --</p> <p>22 those would all be key pieces of information that the</p> <p>23 District could use to start to develop a remedial system</p> <p>24 specific to this site.</p> <p>25 It's possible that the District could at least</p> |
| <p style="text-align: right;">Page 1733</p> <p>1 Now, so the Hargis -- I don't mean to</p> <p>2 mischaracterize testimony. The Hargis would include</p> <p>3 technology review of remediation -- remediation</p> <p>4 technologies?</p> <p>5 A. Their current scope of work, to my knowledge,</p> <p>6 did not include technology review.</p> <p>7 Q. What else has the District done to review</p> <p>8 technology or select technology relating to remediation</p> <p>9 at this station?</p> <p>10 A. In terms of technology for extraction wells and</p> <p>11 treatment processes, I don't believe the District has</p> <p>12 undertaken that activity as of yet --</p> <p>13 Q. Okay.</p> <p>14 A. -- for this station.</p> <p>15 Q. Okay. The District hasn't ruled out the need</p> <p>16 to do so in the future, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. When does the District plan on getting around</p> <p>19 to selecting remedial technology for the site?</p> <p>20 MR. AXLINE: Objection. Calls for speculation.</p> <p>21 THE WITNESS: I'm not aware -- I -- I -- the</p> <p>22 District has not put together a -- a specific time</p> <p>23 schedule for performing those activities.</p> <p>24 BY MR. FINSTEN:</p> <p>25 Q. What steps does the -- sorry. What does the</p> | <p style="text-align: right;">Page 1735</p> <p>1 begin and likely will begin the process of at least</p> <p>2 looking at remedial technology given certain assumptions</p> <p>3 in terms of flow rates, concentrations. That kind of</p> <p>4 activity can be done very quickly even before all the</p> <p>5 data are coming in. And then it could be modified or</p> <p>6 the system could be modified or refined based on</p> <p>7 site-specific information.</p> <p>8 Q. Has the District -- never mind. I think it was</p> <p>9 already asked.</p> <p>10 Does the District plan to take any of those</p> <p>11 steps prior to the conclusion of the first round of CPT</p> <p>12 testing?</p> <p>13 A. I don't think we're going to be starting</p> <p>14 that -- that type of remedial design work prior to the</p> <p>15 first round of CPT testing.</p> <p>16 Q. How about prior to the installation of</p> <p>17 monitoring wells?</p> <p>18 A. It's possible. I -- I won't rule it out, but</p> <p>19 I -- I don't know if that -- if that will be the case or</p> <p>20 not.</p> <p>21 Q. Can you estimate at the earliest when the</p> <p>22 District will be in a position to install a remedial</p> <p>23 system at this site?</p> <p>24 MR. AXLINE: Objection. Vague. Calls for</p> <p>25 speculation.</p>                         |

19 (Pages 1732 to 1735)

## Confidential - Per 2004 MDL 1358 Order

| Page 1736                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 1738                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 And I'm going to instruct the witness not to<br/> 2 speculate. If you can estimate, you can do so, but<br/> 3 you're not required to speculate.<br/> 4 MR. FINSTEN: Agreed. That's why I asked him<br/> 5 to estimate.<br/> 6 MR. AXLINE: And that's why I told him not to<br/> 7 speculate.<br/> 8 THE WITNESS: Yeah. I -- I -- I would be<br/> 9 speculating. I -- I don't have -- I don't have a -- an<br/> 10 idea of that at this time.<br/> 11 BY MR. FINSTEN:<br/> 12 Q. Okay. Let's look at page 3. Technology --<br/> 13 technical assistance, intersite investigations.<br/> 14 Has the District endeavored to conduct any<br/> 15 intersite investigations or remediations involving this<br/> 16 station since 2008?<br/> 17 A. Well, I would say some of the Hargis CPT<br/> 18 locations arguably could be, particularly the<br/> 19 northerly/northeasterly CPTs -- locations that we talked<br/> 20 about could provide data that would be useful in<br/> 21 determining if there is a relationship between the<br/> 22 ARCO 1905 site and the other adjacent site gas station.<br/> 23 So that work may also be considered an intersite<br/> 24 activity.<br/> 25 Q. Since 2008, has the District uncovered any</p>                                                                                                  | <p>1 A. Taking them one at a time, in terms of public<br/> 2 and community relations, the District -- we have<br/> 3 internal public and community relations staff. That's<br/> 4 where the staff subheader comes in. So they've -- they<br/> 5 are at least aware of the CPT work, and they may get<br/> 6 more involved as we get closer to actually being out<br/> 7 doing those CPTs. But I'm not aware of any outside<br/> 8 public relations firms being brought in.<br/> 9 Q. Anything else?<br/> 10 A. As far as real estate, I believe we have<br/> 11 involved our in-house real estate person to help us<br/> 12 begin identifying property owners, but I'm not aware of<br/> 13 bringing in any outside real estate specialist as of yet<br/> 14 for that.<br/> 15 In terms of legal assistance, I guess that<br/> 16 maybe gets into attorney-client privilege, so I don't<br/> 17 know if I can really get into those issues.<br/> 18 Q. Well, the question would be, have you engaged<br/> 19 any legal assistance? That would not be -- I think<br/> 20 Mr. Axline would probably agree that question would not<br/> 21 call for attorney-client privileged information.<br/> 22 A. I -- I guess --<br/> 23 Q. If I were to ask you --<br/> 24 A. Yeah.<br/> 25 Q. -- what did they say, that would clearly</p> |
| Page 1737                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 1739                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 evidence of commingling of MTBE contamination involving<br/> 2 this station and other stations?<br/> 3 A. I don't recall seeing any data that indicate<br/> 4 that there is -- is commingling. I won't rule out that<br/> 5 possibility certainly, but I don't recall seeing data<br/> 6 that indicate that there has been commingling of -- of<br/> 7 this station's plume with other stations' plumes.<br/> 8 Q. Since 2008, has the District done anything<br/> 9 else -- strike that. Strike that. I jumped ahead.<br/> 10 Just looking at page 3, land purchase, public<br/> 11 and community relations, real estate specialist, legal<br/> 12 assistance, insurance and security.<br/> 13 Excepting Hargis, has the District received any<br/> 14 outside technical assistance relating to any of these<br/> 15 issues relating to 1905, land purchase, public community<br/> 16 relations, real estate specialist, legal assistance,<br/> 17 insurance and security?<br/> 18 A. Well --<br/> 19 Q. And I should caution -- sorry. I don't mean to<br/> 20 interrupt you.<br/> 21 A. Sure.<br/> 22 Q. But legal assistance doesn't mean what<br/> 23 Mr. Axline is doing right here, relating to site<br/> 24 acquisitions for wells or remediation systems, or I will<br/> 25 expand that to CPT/HydroPunch testing, also.</p> | <p>1 intrude, but --<br/> 2 A. Okay. Well, the answer is yes on the site<br/> 3 acquisition.<br/> 4 Q. And who have you engaged?<br/> 5 A. Miller Axline.<br/> 6 Q. And when did that occur?<br/> 7 A. Subsequent -- I'd say --<br/> 8 MR. AXLINE: Hold on.<br/> 9 THE WITNESS: Oh, sure.<br/> 10 MR. AXLINE: Let me object here that you're now<br/> 11 asking questions that are not limited to the time period<br/> 12 between Mr. Herndon's last deposition.<br/> 13 MR. FINSTEN: All of these questions are<br/> 14 intended to be limited since 2008, so --<br/> 15 MR. AXLINE: That specific question, I think<br/> 16 needs to be clarified, then.<br/> 17 BY MR. FINSTEN:<br/> 18 Q. When, since 2008, did you engage Miller Axline<br/> 19 to do work relating to site acquisition relating to this<br/> 20 station?<br/> 21 MR. AXLINE: Objection. Vague as to the term<br/> 22 "engage."<br/> 23 BY MR. FINSTEN:<br/> 24 Q. Go ahead.<br/> 25 A. I recall having discussions sometime in July,</p>                                                                                                                                                                                                                                                                                                                  |

20 (Pages 1736 to 1739)

## Confidential - Per 2004 MDL 1358 Order

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1752</p> <p>1 Q. Okay. Now, since 2008, has the District<br/>2 learned of any other real hydrogeologic evidence that<br/>3 MTBE had escaped remediation at the site?<br/>4 A. I believe the detections of MTBE since 2008 in<br/>5 Monitoring Well M-45 are also evidence of plume escape<br/>6 from remediation.<br/>7 Q. And does the District have any evidence linking<br/>8 the detections in MW -- I'm sorry -- in OCWD M-45 with<br/>9 the release at this station?<br/>10 MR. AXLINE: Objection. Asked and answered in<br/>11 his prior deposition. Can you --<br/>12 MR. FINSTEN: This is in relation to new<br/>13 detections in MW-45 -- in OCWD 45. So I think that the<br/>14 question is fair.<br/>15 THE WITNESS: I think the conditions -- the<br/>16 groundwater conditions that have -- that were discussed<br/>17 in my prior deposition or likely that were discussed in<br/>18 my prior deposition in terms of vertical gradient and<br/>19 groundwater flow directions would continue to indicate<br/>20 that the MTBE found in M-45 since 2008 reasonably could<br/>21 have come from -- would have been concluded to have come<br/>22 from this site.<br/>23 BY MR. FINSTEN:<br/>24 Q. And just to confirm, there is -- in the Hargis<br/>25 report, 120, Exhibit 120, then, there is no real</p>                                              | <p style="text-align: right;">Page 1754</p> <p>1 available to Mr. Bolin at the time he made his<br/>2 declaration, right?<br/>3 A. I guess -- what was the date of his declaration<br/>4 again? I forgot.<br/>5 Q. June 3rd, 2009.<br/>6 A. I guess -- I'm not sure if the Hargis report<br/>7 was available to him at that time.<br/>8 Q. Well, looking at the Hargis report real<br/>9 quickly, it's dated in the footer, February 20, 2009,<br/>10 correct?<br/>11 A. That -- that's what the date notation<br/>12 indicates, yes.<br/>13 Q. Do you have any reason to believe that<br/>14 Mr. Bolin didn't look at it until after June?<br/>15 A. I don't know if the District received that<br/>16 document before June of 2009.<br/>17 Q. Okay. All right. Let's take a look at another<br/>18 exhibit that has been previously marked. This has been<br/>19 previously marked as Exhibit 8. This is Plaintiff<br/>20 Orange County Water District's combined responses to<br/>21 certain defendants' third, fourth, fifth, sixth, seventh<br/>22 and eighth sent of interrogatories, re: Cost recovery at<br/>23 Focus Plumes 1, 2, 3, 8, and 9. I'm going to try to<br/>24 speed through this.<br/>25 Mr. Herndon, are you familiar with this</p> |
| <p style="text-align: right;">Page 1753</p> <p>1 hydrogeologic evidence that MTBE had escaped remediation<br/>2 at the site in that summary, correct?<br/>3 MR. AXLINE: Objection. Mischaracterizes the<br/>4 document. Mischaracterizes prior testimony. Vague.<br/>5 Calls for speculation.<br/>6 THE WITNESS: I believe the Hargis report makes<br/>7 a number of statements that indicate that the plume has<br/>8 not been hydraulically contained. It has not been<br/>9 laterally or vertically delineated, and that there are<br/>10 various natural and manmade conduits that could allow<br/>11 for contamination to migrate down into deeper aquifers.<br/>12 BY MR. FINSTEN:<br/>13 Q. Is any of that real hydrogeologic evidence that<br/>14 the contamination had escaped remediation at 1905?<br/>15 MR. AXLINE: Objection. Argumentative.<br/>16 BY MR. FINSTEN:<br/>17 Q. I'm sorry. I don't mean to be argumentative.<br/>18 It's Mr. Bolin's phrase, "real hydrogeologic evidence."<br/>19 I agree coming out of nowhere, that sounds obnoxious,<br/>20 but it's not my own words.<br/>21 A. In terms of specific concentrations<br/>22 associated -- of MTBE associated with this site, I guess<br/>23 those hydrogeologic conditions are not specific in terms<br/>24 of a -- of a given time frame associated with this site.<br/>25 Q. Well, to confirm, the Hargis report was</p> | <p style="text-align: right;">Page 1755</p> <p>1 document?<br/>2 A. Yes.<br/>3 Q. Did you participate in its creation?<br/>4 A. I believe I assisted with that, yes.<br/>5 Q. Okay. If I could get you to look at page 29.<br/>6 There's a chart that was included in response to<br/>7 Interrogatory No. 6. Part of the chart, it says, "The<br/>8 District has expended funds for consulting services,<br/>9 investigative costs and District staff costs, as well<br/>10 analytical costs" -- I'm sorry -- "analytical testing<br/>11 with associated costs of sample collection. A summary<br/>12 of those costs below."<br/>13 Did I read that correctly?<br/>14 A. "Summary of those costs is as follows," yes.<br/>15 Q. Thank you. Thank you.<br/>16 And then there's a chart that goes over to<br/>17 page 29 and page 30. The first line item in the chart<br/>18 refers to investigation costs for H2O R2 Consultants.<br/>19 This is not an expense that was related to<br/>20 ARCO 1905, correct?<br/>21 MR. AXLINE: Objection. Vague.<br/>22 THE WITNESS: Boy, it's been a while since I<br/>23 reviewed the work done by H2O R2.<br/>24 BY MR. FINSTEN:<br/>25 Q. I'll give you a hint. If you turn the page,</p>                          |

24 (Pages 1752 to 1755)



## Confidential - Per 2004 MDL 1358 Order

Page 1888

1 A. Okay.  
 2 Q. -- which identifies ARCO 1912 in the agenda  
 3 items submittal to the board.  
 4 Is this the first time that this station was  
 5 specifically identified to the board of directors of  
 6 Orange County Water District?  
 7 MR. AXLINE: If you're asking about post-2008,  
 8 Counsel?  
 9 MR. FINSTEN: This is dated August 18, 2010.  
 10 And I think that the prior testimony from the prior  
 11 deposition was that there was no discussion of any  
 12 station with the board of directors. I'm just trying to  
 13 ask if there was any other time before August 18, 2010  
 14 that this station was identified to the board.  
 15 MR. AXLINE: Well, the prior deposition  
 16 testimony is what it is.  
 17 MR. FINSTEN: That's right.  
 18 MR. AXLINE: So I'm going to allow him to  
 19 answer the question with respect to time periods  
 20 subsequent to 2008.  
 21 THE WITNESS: Subsequent to 2008, I don't  
 22 recall another time, other than August 18, 2010, where  
 23 this station was specifically identified to the board.  
 24 MR. FINSTEN: Okay. I'm done. I have no  
 25 further questions today.

Page 1889

1 MR. AXLINE: No questions from me.  
 2 MR. FINSTEN: Anybody on the phone?  
 3 MR. AXLINE: We lost everyone.  
 4 MR. FINSTEN: No one. They all gave up on us.  
 5 THE VIDEOGRAPHER: This concludes Volume VIII  
 6 of the corporate designee of Orange County Water  
 7 District, represented by Roy Herndon, in regards to  
 8 production of documents for site-specific ARCO 1905,  
 9 ARCO 1912, Thrifty 383, and Beacon Bay Car Wash Fountain  
 10 Valley.  
 11 This video deposition consists of five  
 12 videotapes. The time is approximately 5:22. We are now  
 13 off the record.  
 14 (The deposition was concluded at 5:22 p.m.)

Page 1890

## REPORTER'S CERTIFICATION

1  
 2  
 3 I, Kimberly Thrall, Certified Shorthand  
 4 Reporter and Registered Professional Reporter, in and  
 5 for the State of California, do hereby certify:  
 6  
 7 That the witness named in the foregoing  
 8 deposition was, before the commencement of the  
 9 deposition, duly administered an oath in accordance  
 10 with the Code of Civil Procedure Section 2094; that  
 11 the testimony and proceedings were reported  
 12 stenographically by me and later transcribed through  
 13 computer-aided transcription under my direction and  
 14 supervision; that the foregoing is a true record of the  
 15 testimony and proceedings taken at that time.  
 16  
 17 IN WITNESS WHEREOF, I have hereunto subscribed  
 18 my name this 21st day of September, 2010.  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Kimberly S. Thrall, RPR, CSR No. 11594

Page 1891

1 -----  
 2 E R R A T A  
 3 -----  
 4 PAGE LINE CHANGE  
 5 REASON: \_\_\_\_\_  
 6 REASON: \_\_\_\_\_  
 7 REASON: \_\_\_\_\_  
 8 REASON: \_\_\_\_\_  
 9 REASON: \_\_\_\_\_  
 10 REASON: \_\_\_\_\_  
 11 REASON: \_\_\_\_\_  
 12 REASON: \_\_\_\_\_  
 13 REASON: \_\_\_\_\_  
 14 REASON: \_\_\_\_\_  
 15 REASON: \_\_\_\_\_  
 16 REASON: \_\_\_\_\_  
 17 REASON: \_\_\_\_\_  
 18 REASON: \_\_\_\_\_  
 19 REASON: \_\_\_\_\_  
 20 REASON: \_\_\_\_\_  
 21 REASON: \_\_\_\_\_  
 22 REASON: \_\_\_\_\_  
 23 REASON: \_\_\_\_\_  
 24 REASON: \_\_\_\_\_  
 25 REASON: \_\_\_\_\_

58 (Pages 1888 to 1891)

# **EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re: Methyl tertiary Butyl Ether ("MtBE")  
Products Liability Litigation

This Document Relates To:  
*Orange County Water District v. Unocal  
Corporation, et al.,*  
Case No. 04 Civ. 4968 (SAS)

MDL No. 1358 (SAS)

**DECLARATION OF CHARLES R.  
LINES IN COMPLIANCE WITH CASE  
MANAGEMENT ORDER NO. 4,  
SECTION IILB.1.(b).(ii)**

The Honorable Shira A. Scheindlin

**DECLARATION OF CHARLES R. LINES**

I, Charles R. Lines, under penalty of perjury, hereby declare as follows:

1. I am Manager – Policies, Legislation and Regulation for ChevronTexaco Products Company, a division of Chevron U.S.A. Inc. I submit this declaration on behalf of Chevron U.S.A. Inc. ("Chevron"), pursuant to Case Management Order No. 4. Except as otherwise stated, I have personal knowledge of the facts set forth herein.

2. Attached hereto as Exhibit A is a chart identifying the addresses of the gasoline stations that Chevron has owned, operated, leased, and/or that have been subject to a Chevron retail supply contract, since 1986, with the dates of such ownership, operation, lease, and/or retail supply contract, within Orange County, California (the "Station Chart").

3. I am informed and believe that the Station Chart attached hereto was prepared using the information provided by Chevron employees Tony Dong and Lorraine Griswold, who have knowledge regarding the databases containing the service station operational histories reflected in the charts. I am further informed that these operational histories were derived from two primary databases: the SAP eFoundation database downloaded into the MARKeting Viewable Electronic Library ("MARVEL") reporting tool, and the Chevron

1-LA/809847.1



Products System ("CPS") database.

4. The SAP eFoundation and CPS databases encompass various systems that track customer and product transactions for various Chevron businesses. These include sales, contracts, invoices, payments, bank transfers, credit, tax, price, customer and production information for gasoline and other petroleum products supplied by Chevron to Chevron-branded retail service station facilities. CPS was replaced by SAP eFoundation on January 1, 2003. CPS data was imported into SAP eFoundation. Data from SAP is downloaded into MARVEL each day.

5. The accuracy of the service station information contained in the SAP eFoundation and CPS databases is limited, as the databases rely on the precision of the party inputting the data into them. In addition, on occasion, the older CPS data may be overridden by newer SAP data that is entered, such as date information, which may alter the original data entry. In obtaining information from the databases and preparing the attached Station Chart, Chevron did not review or compare the underlying service station files, which may contain more accurate and complete information.

6. The Station Chart lists the subject service station sites by address, with three rows identifying the type and years of operation for each site: "Owned/Leased," which refers to stations that were either operated by Chevron ("company operated" sites), or stations where Chevron owned the real property or leased it from a third party ("three-party" sites); "Operated," which refers to company operated sites; and "Retail Supply Contract," which refers to three-party sites and to sites where the real property and service station facilities were owned or leased and operated by a third party ("two-party" sites).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29 day of December, 2004 at Brea, California.

  
Charles R. Lines



**Exhibit A to Declaration of Charles R. Lines**

MDL No. 1358 (SAS) - Orange County Water District  
Station Chart

---

45. Station Address: 2261 N FAIRVIEW ST, SANTA ANA, CA 92706-2244  
Owned/Leased: 1986-1998  
Operated:  
Retail Supply Contract: 1986-2004
46. Station Address: 32852 VALLE RD, SAN JUAN CAPISTRANO, CA 92675-4502  
Owned/Leased:  
Operated:  
Retail Supply Contract: 1986-1994
47. Station Address: 400 N STATE COLLEGE BL, ANAHEIM, CA 92806-2916  
Owned/Leased:  
Operated:  
Retail Supply Contract: 1986
48. Station Address: 3801 S BRISTOL ST, SANTA ANA, CA 92704-7426  
Owned/Leased: 1986-2000, 2002-2004  
Operated: 2002-2004  
Retail Supply Contract: 1986-2000
49. Station Address: 2590 NEWPORT BLVD, COSTA MESA, CA 92627-5179  
Owned/Leased: 1986-1987  
Operated:  
Retail Supply Contract: 1986-1987
50. Station Address: 604 S COAST HWY, LAGUNA BEACH, CA 92651-2476  
Owned/Leased: 1986-2004  
Operated:  
Retail Supply Contract: 1986-2004
51. Station Address: 4991 E LINCOLN BLVD, CYPRESS, CA 90630-2655  
Owned/Leased: 1999  
Operated:  
Retail Supply Contract: 1999
52. Station Address: 10972 KATELLA AVE, ANAHEIM, CA 92804-6134  
Owned/Leased: 1986-2004  
Operated:  
Retail Supply Contract: 1986-2004

## Exhibit A to Declaration of Charles R. Lines

MDL No. 1358 (SAS) - Orange County Water District  
Station Chart

---

99. Station Address: 633 WILLIAMSON AVE, FULLERTON, CA 92832-2155
- Owned/Leased:  
Operated:  
Retail Supply Contract: 1986-1988
100. Station Address: 5395 E LA PALMA AVE, ANAHEIM, CA 92807-2086
- Owned/Leased:  
Operated:  
Retail Supply Contract: 1986-1999
101. Station Address: 1000 W ORANGETHORPE AVE, FULLERTON, CA 92833-4734
- Owned/Leased: 1986-2000  
Operated:  
Retail Supply Contract: 1986-2000
102. Station Address: 1801 S HARBOR BLVD, ANAHEIM, CA 92802-3509
- Owned/Leased: 1986-2004  
Operated: 2003-2004  
Retail Supply Contract: 1986-2002
103. Station Address: 10511 GARDEN GROVE BLVD, GARDEN GROVE, CA 92843-1128
- Owned/Leased:  
Operated:  
Retail Supply Contract: 1986-1989
104. Station Address: 1071 NORTH BLUE GUM ST, ANAHEIM, CA 92806-2406
- Owned/Leased:  
Operated:  
Retail Supply Contract: 1986
105. Station Address: 361 N HARBOR BLVD, LA HABRA, CA 90631-4846
- Owned/Leased:  
Operated:  
Retail Supply Contract: 1986-2002
106. Station Address: 5992 WESTMINSTER BLVD, WESTMINSTER, CA 92683-3546
- Owned/Leased: 1986-2001  
Operated: 2001  
Retail Supply Contract: 1986-2000, 2002-2004

# **EXHIBIT 5**

Aug 31 2010  
11:00AM

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re: Methyl *tertiary* Butyl Ether ("MtBE")  
Products Liability Litigation

Master File No. 1:00-1898  
MDL No. 1358 (SAS)

This Document Relates To:

DECLARATION OF  
TAM BUI

*Orange County Water District v. Unocal  
Corporation, et al.,*  
Case No. 04 Civ. 4968 (SAS)

Tam Bui hereby declares and states as follows:

I. I am the Manager of the Huntington Beach Terminal (located in Huntington Beach, CA) for Chevron U.S.A. Inc. (Chevron"). Chevron maintains electronic records of gasoline deliveries to retail gasoline stations. I have reviewed these electronic records, and I am familiar with them. True and correct copies of those records have been produced at:

|                |                                                                      |
|----------------|----------------------------------------------------------------------|
| Chevron 9-5401 | CHEVMDL135800000583389 – 585345,<br>CHEVMDL135800000585346 – 585564; |
| Chevron 9-1291 | CHEVMDL135800000583389 – 585345,<br>CHEVMDL135800000585346 – 585564; |
| Chevron 208554 | CHEVMDL135800000583389 – 585345,<br>CHEVMDL135800000585346 – 585564; |
| Chevron 9-5568 | CHEVMDL135800000706814 – 707182;                                     |
| G&M Oil No. 4  | CHEVMDL135800000666080 – 666274;                                     |
| G&M Oil No. 24 | CHEVMDL135800000666275 – 666486; and                                 |
| G&M Oil No. 38 | CHEVMDL135800000707284 – 707415.                                     |

Chevron has no record of delivering gasoline to any other stations that have been designated as part of a Focus Plume not listed above.

The column headings on the spreadsheets identified above are defined as follows:

"Cal.year/ Month" is the date of delivery.

"Movement Type" is a sale or stock transfer. (A stock transfer is Chevron product taken



to a Chevron station.)

"Ship-to part Trade Class" means the type of station to which the gasoline was delivered.

"Ship to party Facility #" means the distinct number assigned to each Chevron-branded station.

"Ship to Party Name" means the name of the dealer or operator at the facility.

"MOT" means method of transportation.

"Billing document" means Bill of Lading used to invoice dealer or station.

"Pricing date" means the price on the day of loading. The price typically changes every 24 hours.

"Product Code" is the distinct code assigned to each type of gasoline refined by Chevron.

"Product Name" is the name of the product associated with the distinct product code.

"Billed Quantity Gallons" is the amount of gasoline delivered in gallons.

"Quantity in Barrels" is the amount of gasoline delivered in barrels.

2. Chevron 9-1921 at 3801 Bristol is a Chevron-branded station. It was owned by Chevron U.S.A. Inc. from a date prior to 1986 until a date after December 31, 2003. During this time period, the station was operated by the following independent businessmen/businesses: Louis J. Bacca, Mustang Marketing, Inc., and Chevron.

3. Chevron does not know the precise dates when gasoline containing MTBE was first stored at Chevron-branded stations because its delivery records do not differentiate gasoline with or without MTBE until late 1992. In general, Chevron-branded stations likely had MTBE in certain premium gasoline grades commencing some time in the late 1980s. Starting in late 1992, all grades of gasoline sold at the Chevron-branded stations contained MTBE during the wintertime months in order to comply with the federal Wintertime Oxygenate Program. In 1995, Chevron started adding MTBE on a year-round basis to all gasoline grades in order to comply

with the federal Reformulated Gasoline Program. Chevron stopped selling gasoline containing MTBE at the Chevron-branded stations in 2003, pursuant to the Governor's Executive order on MTBE Phase Out. Consistent with its general practice, Chevron's delivery records show that it delivered gasoline containing MTBE to Chevron 9-1921 on the following dates:

October 29, 1992 through February 28, 1993;

October 1, 1993 through February 28, 1994;

September 29, 1994 through February 28, 1995; and

September 20, 1995 through January 14, 2003.

The specific dates and amounts of those deliveries are set forth in the spreadsheets produced at CHEVMDL135800000583389 – 585345 and CHEVMDL135800000585346 – 585564.

After a diligent search of its records, Chevron was unable to locate any dealership agreements related to this station during the relevant time period.

4. Chevron 9-5401 at 5992 Westminster is a Chevron-branded station. It was owned by Chevron U.S.A. Inc. from a date prior to 1986 until January 7, 2002. During this time period, the station was operated by the following independent businessmen/companies: Keith Van Hoesen, Adartse Enterprises, Inc., Chevron Stations Inc., Hassan & Sons Inc., and G&M Oil Co., Inc. From January 8, 2002 until a date after December 31, 2003, Chevron #9-5401 was owned and operated by G&M Oil Co., LLC.

5. Chevron does not know the precise dates when gasoline containing MTBE was first stored at Chevron-branded stations because its delivery records do not differentiate gasoline with or without MTBE until late 1992. In general, Chevron-branded stations likely had MTBE in certain premium gasoline grades commencing some time in the late 1980s. Starting in late 1992, all grades of gasoline sold at the Chevron-branded stations contained MTBE during the

wintertime months in order to comply with the federal Wintertime Oxygenate Program. In 1995, Chevron started adding MTBE on a year-round basis to all gasoline grades in order to comply with the federal Reformulated Gasoline Program. Chevron stopped selling gasoline containing MTBE at the Chevron-branded stations in 2003, pursuant to the Governor's Executive order on MTBE Phase Out. Consistent with its general practice, Chevron's delivery records show that it delivered gasoline containing MTBE to Chevron 9-5401 on the following dates:

October 29, 1992 through February 28, 1993;

October 1, 1993 through February 28, 1994;

September 30, 1994 through February 28, 1995; and

September 18, 1995 through January 14, 2003.

The specific dates and amounts of those deliveries are set forth in the spreadsheets produced at CHEVMDL135800000583389 - 585345 and CHEVMDL135800000585346 - 585564.

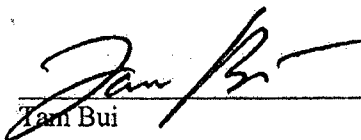
True and correct copies of certain dealership agreements and related documents for Chevron 9-5401 can be found at:

CHEVMDL135800000585933 - 585943,  
CHEVMDL135800000585977 - 585986,  
CHEVMDL135800000585988 - 585991,  
CHEVMDL135800000585995,  
CHEVMDL135800000586023 - 586048,  
CHEVMDL135800000586054 - 586063,  
CHEVMDL135800000586089 - 586109,  
CHEVMDL135800000586121 - 586131,  
CHEVMDL135800000586134 - 586135,  
CHEVMDL135800000666618 - 666624,  
CHEVMDL135800000666625 - 666632, and  
CHEVMDL135800000666633 - 666673.

6. Chevron 208554 at 8980 Warner is a Chevron-branded station. It was owned by G&M Oil Co., Inc. from June 25, 1999 through December 31, 2001 and was owned by G&M Oil Co., LLC from January 1, 2002 until a date after December 31, 2003. During that time period,

I declare under penalty of perjury that the foregoing is true and correct.

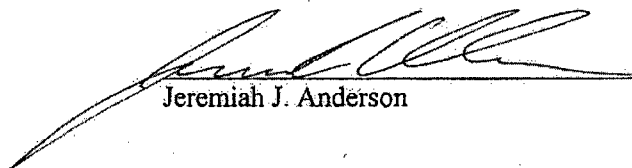
Executed at HUNTINGTON BEACH, California, this 27 day of August, 2010.

  
Tam Bui



**CERTIFICATE OF SERVICE**

I hereby certify that on the 31<sup>st</sup> day of August 2010, a true, correct, and exact copy of the foregoing document was served on all counsel via LexisNexis File & Serve.



Jeremiah J. Anderson